217.

SUPREME COURT OF THE UNITED STATES.

No. 95.

JANE WATSON ET AL., PLAINTIFFS IN ERROR,

VERSUS

JOHN MERCER, SURVIVING EXECUTOR OF JAMES MERCER.

IN ERROR TO THE SUPREME COURT OF PENNSYLVANIA FOR LANCASTER DISTRICT.

INDEX.

	Original.	Print.
Title in court of common pleas	1	2
Docket entries in circuit court	1	3
Declaration and notice	2,..3	3, 4
Sheriff's return	3	4
Certiorari to court of common pleas; endorsement on same	4	4
Affidavit of David Watson, clerk's certificate	5	5
Docket entry in court of common pleas	6	5
In circuit court, judgment entered, appeal granted, judgment of circuit court affirmed by Supreme Court	6	6
Habere facias possessionem, &c	7	6
Declaration and notice	7,..8	7
Motion by defendant for new trial	10	8
Certiorari	11	9
Return to certiorari	12	9
In Supreme Court, judgment of circuit court affirmed	12	10
Habere facias possessionem	13	10
Sheriff's return, certificate of clerk	15	11
Short entries in case from 1809 to 1816	16	12
Writ and return	18	14
Declaration	19	14
Application to refer to arbitrators	20	15
Endorsement on same	21	16
Rules of reference	21	16
Report of arbitrators	22	17
Appeal from award of arbitrators	23	17
Notes of testimony	24	18
Notes of charge	26	19
Plaintiff's attorneys' calculations	28	20
Errors assigned, precipe for writ of error	29	21

Recognizance.....30.....22
Writ of error.....31.....23
Endorsement on writ of error.....32.....23
Judgment of court of common pleas, reversed by Supreme Court.....33.....23
Fi. fa., and return of sheriff.....34,.35.....25
Certificate of clerk.....35.....25
Docket entries in court of common pleas.....36.....26
Writ of ejectment.....38.....27
Sheriff's return, agreement of attorneys.....39.....28
Notes of proceedings.....39.....28
Defendant's points.....42.....30
Plaintiff's points, charge of the court.....43.....30
Bill of exceptions.....46.....32
Proceedings in the District court for the city and county of Lancaster, judgment entered, appeal to Supreme Court.....56.....36
Writ of ejectment.....57.....37
Certiorari and return.....59,. 60...40
Rule and plea.....60.....41
Judges' notes of trial.....62.....42
Charge of the court.....66.....44
Defendant's points.....68.....45
Reasons for new trial.....74.....49
Docket entries in Supreme Court.....76.....50
Certificate of clerk.....77.....50
Opinion of the court, delivered by Mr. Justice Kennedy.....78.....51
Writ of error.....81.....57
Appeal bond.....83.....57
Citation and service.....85,...68..58

In the court of common pleas of Lancaster county, in the Commonwealth of Pennsylvania, of the term of February, in the year of our Lord one thousand eight hundred and two, among other things, it is thus contained:

Ejectment, February 4, 1802.

Hopkins. Jos. FAIRPYLAY, lee. of DAVID WATSON and SARAH his wife 77 *vs.* Montg., C. Smith. JAMES FOULPLAY, with notice to JAMES MERCER.
Affd. filed.
Recd. ret. to C. Court.

Served (15 m.)
Montgomery appears, pleads *non cul.* takes defence as to acres, and enters into the common rule.

Removed by certiorari.

Copy of the docket entry in the circuit court, to March term, 1802, *No.* 2.

Ejectment.

Hopk. Cert. 2 Montg'y. C. Smith.	Jos. FAIRPLAY, lee. of DAVID WATSON and SARAH his wife. *vs.* JAMES FOULPLAY, with notice to JAMES MERCER.

April 8, 1802, rule to plead in 30 days; defend't. pleads *non eul.*, takes defence as to acres, and enters into the common rule. Issue and rule for trial abated by the death of the defendant, says C. SMITH.

V. fa. ret'ble 11th April, 1803.
V. fa. ret'ble 9th April, 1804.
V. fa. ret'ble April, 1805.
V. fa. ret'ble April, 1806.
V. fa. ret'ble May, 1807.
V. fa. ret'ble May, 1808.
V. fa. ret'ble May, 1809.

Copy of the narr. of November term, MDCCCI.

LANCASTER COUNTY, *ss.*

James Foulplay, late of the said county, yeoman, was attached to answer Joseph Fairplay of a plea, wherefore, with force and arms, &c. he entered into one messuage, one barn, one garden, one orchard, one hundred and twenty acres of arable land, and five acres of woodland, adjoining lands of George Ecker and Pequea creek, with the appurtenances lying and being in Strasburg township, in the county aforesaid; which David Watson and Sarah his wife demised to the said Joseph for a term which is not yet expired, and ejected him from his said farm, and other wrongs to him did, to the great damage of the said Joseph, and against the peace of the Commonwealth of Pennsylvania, &c. Whereupon the said Joseph, by James Hopkins, his attorney, complains that the said David Watson and Sarah his wife, on the first day of February, in the year of our Lord one thousand eight hundred and two, had demised to the said Joseph the tenements aforesaid, with the appurtenances to have and to hold the said tenements, with the appurtenances, to the said Joseph and his assigns, from the said first day of February, in the year aforesaid, to the end and term of ten years from thence next following, and fully to be complete and ended, by virtue of which demise the said Joseph entered into the said tenements, with the appurtenances, and was thereof possessed; and the said Joseph being so possessed thereof, the said James Foulplay afterwards, that is to say, on the first day of February, in the year last aforesaid, at the county aforesaid, with force and arms, &c., entered into the said tenements, with the appurtenances, which the said David Watson and Sarah his wife demised to the said Joseph in form aforesaid, for the term aforesaid, which is not yet expired, and ejected the said Joseph out of his said farm, and other wrongs to him did, to the great damage of the said Joseph, and against the peace of the Commonwealth of Pennsylvania, &c. Whereupon, the said Joseph saith that he is injured, and hath damage to the value of one hundred pounds lawful money of Pennsylvania. And whereupon he brings this suit, &c.

Pledges f pr. { JOHN DOE. RICHARD ROE.

SIR: I am informed that you are in *possion* of, or claim a title to the premises in this declaration mentioned, or to some part thereof; and I, being sued in this action as casual ejector, and having no claim or title to the said premises, do advise you to appear on the second Monday of February instant, in the county court of common pleas *there* to be holden at Lancaster, and for the county of Lancaster, by some attorney of that court; and then and there, by a rule to be made of the said court, to cause yourself to be made defendant in my stead; otherwise, I shall suffer judgment to be entered against me, and you will be turned out of possession.

I am, your loving friend,
JAMES FOULPLAY.
February 5, 1802.

To JAMES MERCER, tenant in possession of the premises in the above declaration mentioned, or some part thereof.

Endorsed on the foreging narr.

77. February term, 1802.
JOSEPH FAIRPLAY, lee. of DAVID WATSON and SARAH his wife, *vs.* JAMES FOULPLAY, with notice to JAMES MERCER.
Narr. in ejectment.
15 miles served, so answers.
MICHAEL RINE, *Sheriff.*
Original.

Copy of certiorari to Circuit Court.

PENNSYLVANIA, *Lancaster county, ss.*

[SEAL.] The Commonwealth of Pennsylvania to the judges of the court of common pleas for the county of Lancaster, greeting:

We being willing, for certain causes, to be certified of a certain plea of trespass and ejectment, wherein Joseph Fairplay, lee. of David Watson and Sarah his wife, is plaintiff, and James Foulplay, with notice to James Mercer, is defendant, before you, or some of you, depending, do command you that the plea aforesaid, with all things touching the same, before the justices of the circuit court for the county of Lancaster, or one or more of them, unto the office of the clerk of the circuit court at Lancaster, for the said county, on the third Monday of March next, so full and entire as in our court before you they remain, you certify and send, together with this writ, that we may farther cause to be done thereupon that which of right, and according to the laws of the State of Pennsylvania, ought. Witness, the honorable Edward Shippen, esq., doctor of laws, Chief Justice of the Supreme Court of Pennsylvania at Lancaster, the fourteenth day of December, in the year of our Lord one thousand eight hundred and one.

W. BARTON, *Cl. Cir. Cot.*

Allowed pr. Y. YEATES.

Endorsed on the foregoing certiorari.

2 March term, 1802.
Jos FAIRPLAY lee. of DAVID WATSON, and SARAH his wife, *vs.* JAMES FOULPLAY, with notice to JAMES MERCER.
Certiorari.
Mr. Hopkins, pr. pltff.

LANCASTER COUNTY, *ss.*

The plea within metioned, with all things touching the same, so full and entire as before us they remain in a certain schedule to this writ annexed, before the justices of the Supreme Court of Pennsylvania, or one or more of them, at the day and place within contained, we certify and send as within we are commanded.

So answer,

ROB'T. COLEMAN,
JNO. WHITEHILL,
FREDERICK KUHN, } *Judges, &c.*

Copy of the affidavit.

Lee. of DAVID WATSON and wife,
vs.
JAMES MERCER. } In the common pleas of Lancaster county.

David Watson, being duly sworn according to law, says that *that* he verily believes the defendant in this cause will commit waste on the premises for which this ejectment is brought, if not restrained by the court during the pendency of the suit, and further saith not.

DAVID WATSON.

Sworn and subscribed before me:

JOHN WHITEHILL.

STATE OF PENNSYLVANIA, *Lancaster county, ss.*

I, Christian Bachman, prothonotary of the court of common [SEAL] pleas for said county, do certify that the within and foregoing contains a full and correct copy of the whole record of the suit therein stated.

In testimony whereof, I have hereunto set my hand and the seal of said court at Lancaster, this eleventh day of May, in the year of our Lord one thousand eight hundred and thirty-three.

CHRISTN. BACHMAN, *Prothy.*

In the court of common pleas of Lancaster county, in the Commonwealth of Pennsylvania, of the term of February, in the year of our Lord one thousand eight hundred and five, among other things, it is thus contained:

Copy of the docket entry.

Hopk. RICHARD FAIRPLAY, lessee of DAVID WATSON and SARAH his wife, 69 *vs.* Montgy. JOHN FOULPLAY, with notice C. Smith. to FRANCIS BAILEY, JOHN MERCER, JOHN MESSENCOPE, and JOSEPH LEFEVRE.
Recd. ret. to C. Court.

Ejectment. Feb 4, 1805.
Served (12m.)
Montgomery and C. Smith appear, take defence as to acres, pleads *non cul.*, and enters into the common rule.
Remd. by certiorari.

Copy of the docket entry in the circuit court, to March term, 1805 *No* .4.

Hopk. RICHARD FAIRPLAY, lessee of DAVID WATSON, and SARAH his wife,
Cert. 4. *vs.*
Montgy. JOHN FOULPLAY, with notice to FRANCIS BAILEY, JOHN MER-
C. Smith. CER, JOHN MESSENCOPE, and JOSEPH LEFEVRE.

Pltffs'. bill filed with records.

Ejectment. Enter into the common rule *non cul.*, issue and rule for trial, December, cont. March, 1806, cont. Sept., cont. Dec. cont., March, 1807, cont. And now, May 13th, 1807, a jury being called, came to wit: Jacob Brua, Benjamin Hostetter, David Martin, jr., Joseph Smedley, Michael Bender, Christian Becher, Jacob Haldeman, Christian Groff, Peter Torney, Christian Leib, Joseph Cassell, and John Grebill, who, being duly empannelled, returned elected by ballot, chosen, sworn, and affirmed, upon their respective affirmations do say, that they find for the plaintiff. Motion for a new trial, and overruled by the court; appeal prayed and granted, judgment.

2. v. fas. issd.
V. fa. issd. Apl. 1806.
May, 1807.

Nathaniel Watson, esqr., tent. to defdts. in $200, conditioned that, in case the pl'tiff in this cause be cast, he will pay the costs of suit.
Cog. March 2d, 1807.
Cor. me. W. Barton.

Tent. p. pltff.
WM. MCCAUSLAND, sen.
} Appeal filed May 16th, 1807.
Jany. 11, 1809, records returned.

Records returned to the Supreme Court, October 20th, 1807. Supreme Court, and now, to wit, December 31st, 1808, judgment affirmed. Ex. habere facias possessionem, and fi. fa. for costs to March term, 1809, No. 2.

Copy of the docket entry of the habere facias, &c.

RICHARD FAIRPLAY, lessee of DAVID WATSON and SARAH his wife,
2 *vs.*
JOHN FOULPLAY, with notice to FRANCIS BAILEY, JOHN MERCER, JOHN MESSENCOPE, and JOSEPH LEFEVRE.

March 9th, 1809, recd. of sheriff thirty-seven dollars eighty-seven cents, pl'tffs bill. Sup. Ct., costs pd. by me, and atty's costs.

J. HOPKINS, *P. Q.*

Ptiffs. bill	$15 62
Supreme Court costs paid by Mr. Hops.	12 92
Clk. C. Ct. W. B.	12 56
Clk. C. Ct. J. P.	1 00
Atty. and ul.	5 00
Shff.	70
Prot. com. pleas	4 00
Atty. v.	4 33
Shff.	3 16
	$59 29

Habere facias possessionem, and fi. fa. for costs, isd Jany. 11th.
HOPKINS.

Costs paid to Emanuel Rugart, sheriff. J. Passmore recd. one dollar.

Watson et al. vs. Mercer's Executor. 2123.7

Copy of the narr.

LANCASTER COUNTY, *ss.*

John Foulplay, late of the county of Lancaster aforesaid, yeoman, was attached to answer Richard Fairplay of a plea, wherefore, with force and arms, &c., he entered into one messuage, one barn, one garden, one orchard, one hundred and twenty acres of arable land, and ten acres of woodland, adjoining lands of George Ecker and Pequea creek, with the appurtenances lying and being in Strasburg township, in the county of Lancaster aforesaid; which David Watson and Sarah his wife demised to the said Richard for a term which is not yet expired, and ejected him from his said farm, and other wrongs to him did, to the great damage of the said Richard, and against the peace and dignity of the Commonwealth of Pennsylvania, &c. And whereupon, the said Richard, by James Hopkins, his attorney, complains that, whereas the said David and Sarah, on the seventh day of December, in the year of our Lord one thousand eight hundred and four, had demised the tenements aforesaid, with the appurtenances, to have and to hold the said tenements, with the appurtenances, to the said Richard and his assigns, from the sixth day of December, and year aforesaid, to the end and term of twelve years from thence next following, and fully to be completed and ended; by virtue of which demise the said Richard entered into the said tenements, with the appurtenances, and was thereof possessed; and the said Richard, being so thereof possessed, the said John afterwards, that is to say, on the said seventh day of December, in the year last aforesaid, at the county aforesaid, with force and arms, &c., entered into the said tenements, with the appurtenances, which the said David and Sarah demised to the said Richard in form aforesaid, for the term aforesaid, which is not yet expired, and ejected the said Richard out of his said farm, and other wrongs to him did, to the great damage of the said Richard, and against the peace of the said Commonwealth of Pennsylvania, &c. Whereupon, the said Richard saith he is injured, and hath sustained damage to the value of fifty pounds lawful money of Pennsylvania. And whereupon, he brings this suit, &c.

JOHN DOE,
RICHARD ROE,
Pledges of Prosecution.
JAMES HOPKINS,
Atty. for Plaintiff.

GENTLEMEN: I am informed you are in possession of, or claim a title to the premises in this declaration mentioned, or to some part thereof; and I being sued in this action as casual ejector, and having no claim or title to the said premises, do advise you to appear on the second Monday in February instant, in the county court of common pleas, then to be holden at Lancaster, in and for the county of Lancaster, by some attorney of that court; and then there, by a rule to be made of the said court, to cause yourself to be made defendant in my stead; otherwise, I shall suffer judgment to be entered against me, and you will be turned out of possession.

I am, your humble servant,
JOHN FOULPLAY,

February 5, 1805.

To FRANCIS BAILEY, JOHN MERCER, JOHN MESSENCOPE, and JOSEPH LEFEVRE, tenants in possession of the premises in the above declaration mentioned, or some part thereof.

Endorsed on the narr.

69. Feby. term, 1805.
Lee. of David Watson and wife,
vs.
John Foulplay, with notice to Francis Bailey, John Mercer, John Messencope, and Joseph Lefevre.

Narr. in ejectment. Original.
Served 12 miles; so answers,
JOHN REITZEL, *Sheriff.*

Circuit Court, Lancaster, April 13th, 1807, *Cor. Tilghman, C. J.*

Bowie. Hopk. Lessee of David Watson, and Sarah his wife,
vs.
Hopk., C. Smith. Francis Bailey, and others.

Ejectment.

HOPKINS.
WM. McCAUSLAND.

There was John, Samuel, and Joseph Patterson. The girls were Margaret and Sarah. The male branch extinct, unmarried. Margaret married James Mercer, who is dead, without issue. Sarah married David Watson; Samuel Patterson Watson is her only child. The lands in dispute are part of the lands held by the Pattersons.

Montgomery.—Defedts. claim under Margaret Mercer.
May 30th, 1785.—James Mercer and Margaret his wife, conveyed to Nathan Thompson; same day, Nathan Thompson conveyed to James Mercer.
Nov. 1786.—No. 54. Mercer and Watson and wife. Judgment in partition.
August, 1787.—No. 83.

Lessee of David Watson and wife,
vs.
Bailey and others.

Defendant moves for a new trial in the cause, for the following reasons:

1. Defendant, to bar the claim of the plaintiffs offered in evidence a deed from James Mercer and wife to Thompson, with the acknowledgment thereon in *hoc verba*, which deed and acknowledgment the learned judge declared not to be sufficient in law to bar the claim of the plaintiffs in this cause.

2. Defendant offered to give in evidence, declarations of the wife of James Mercer to the following effect: That she executed the said deed voluntarily, and, if it was not sufficiently done, she would execute it and acknowledge it over again, or do any other act to render the said deed valid and effectual; which evidence the learned judge declared to be inadmissible.

We do certify that we believe the reasons above stated are sufficient in point of law to procure a decision in favor of the defendants in this cause, and that a new trial ought to be granted, and the appeal is not made for the purpose of delay.

C. SMITH
W. MONTGOMERY.

Endorsed on the foregoing.

4. March term, 1805.
DAVID WATSON et. ux.
vs.
FRANCIS BAILEY et al. } Appl. filed May 16th, 1807.

Copy of the certiorari.

PENNSYLVANIA, *Lancaster county, ss.*

The Commonwealth of Pennsylvania to the judges of the court
[SEAL.] of common pleas of the county of Lancaster, greeting:
We being willing, for certain causes, to be certified of a plea of ejectment, wherein Richard Fairplay, lessee of David Watson and Sarah his wife, are plaintiffs, and John Foulplay, with notice to Francis Bailey, John Mercer, John Messencope, and Joseph Lefevre, are defendants, before you, or some of you, depending, do command you that the plea aforesaid, with all things touching the same, before the justices of the circuit court for the county of Lancaster, or one or more of them, into the office of the clerk of the circuit court at Lancaster, for the said county, the third Monday of March next, so full and entire as in our court before you they remain; you certify and send, together with this writ, that we may further cause to be done thereupon that which of right, and, according to the laws of State of Pennsylvania, ought. Witness, the honorable Edward Shippen, esq , doctor of laws, Chief justice of the Supreme Court of the State of Pennsylvania at Lancaster, the tenth day of December, in the year of our Lord one thousand eight hundred and four.

W. BARTON, *Cl. Cir. Cot.*

Allowed pr. J. YEATES.

Endorsed on the foregoing certiorari.

4. March term, 1805.
RICHARD FAIRPLAY, lessee of DAVID WATSON and SARAH his wife,
vs.
JOHN FOULPLAY, with notice to FRANCIS BAILEY, JOHN MERCER, JOHN MESSENCOPE, and JOSEPH LEFEVRE. } Certiorari. Mr. Hopkins for pltff.

LANCASTER COUNTY, *ss.*

The plea within mentioned, with all things touching the same, so full and entire as before us they remain, in a certain schedule to this writ annexed, before the justices of the circuit court, the day and place therein contained. We certify and send as within we are commanded.

So answers

ROBT. COLEMAN, } *Juages, &c.*
ANDREW GRAFF, }

In the Supreme Court of the eastern district of Pennsylvania, of December term, 1807.

Hopkins. The lessee of DAVID WATSON and SARAH his wife,
No. 42. *vs.*
Montgy. FRANCIS BAILEY, JOHN MER-
C. Smith. CER, JOHN MESSENCOPE, and
JOSEPH LEFEVRE.

Appeal from the circuit court of Lancaster county, filed 21st October, 1807.

Lancaster county.

At a Supreme Court held at Philadelphia, in and for the eastern district of Pennsylvania, the 22d day of December, 1808, argued and curia adviss are vult.

And now, to wit, 31st December, 1808, judgment affirmed.

Prothy. and certif., &c. - - - - - - -	$4 72
Atty. - - - - - - - - -	8 00
Cryer - - - - - - - - -	20
	$12 92
Supreme costs taxed at - - - - -	$12 92

I, Joseph Reed, prothonotary of the Supreme Court of the eastern district of Pennsylvania, hereby certify that the foregoing contains a true copy of the docket entries in the above cause, as the same remain of *remain of* record, in my office.

In witness whereof, I have hereunto set my hand, and affixed
[SEAL.] the seal of said Supreme Court at Philadelphia, this ninth day of January, in the year of our Lord one thousand eight hundred and nine.

JOS. REED, *Prothy.*

Copy of the habere facias possessionem.

LANCASTER COUNTY, *ss.*

The Commonwealth of Pennsylvania to the sheriff of Lancaster
[SEAL.] county, greeting:

Whereas Richard Fairplay, lessee of David Watson and Sarah his wife, lately in our circuit court for the county of Lancaster, before our justices thereof, at Lancaster, by the judgment of the same court, recovered against John Foulplay, with notice to Francis Bailey, John Mercer, John Messencope, and Joseph Lefevre, late of your county, yeoman, their term yet to come of and in one piece of land, situate in Strasburg township, in the county of Lancaster aforesaid, containing one hundred and twenty acres of arable land, and ten acres of woodland, one messuage, one barn, one garden, and one orchard, which David Watson and Sarah his wife demised to the said Richard for a term of years which is not yet expired, to have and to hold the pieces of land, with the appurtenances, unto the said Richard and his assigns, from the seventh day of December, in the year of our Lord MDCCCIV., to the end and term of twelve years thence next following, and fully to be complete and ended; by virtue of which demise the

said Richard entered into the said tenements with the appurtenances, and was thereof possessed; and the said Richard being so thereof possessed, the said John afterwards, that is to say, on the said seventh day of December, in the year last aforesaid, at the county aforesaid, with force and arms, &c., entered into the premises aforesaid, with the appurtenances so as aforesaid demised to the said Richard in manner aforesaid, in and upon the possession of the said Richard thereof, and him from his lands and tenements aforesaid ejected, his said term therein not being ended; whereof the said Francis Bailey, John Mercer, John Messencope, and Joseph Lefevre, are convicted. Wherefore, we command you that, without delay, you cause the said David Watson and Sarah his wife, to have their possession of their term aforesaid yet to come of and in the lands aforesaid, with the appurtenances. And we also command you that, of the goods and chattels, lands and tenements, of the said Francis Bailey, John Mercer, John Messencope, and Joseph Lefevre, in your bailiwick, you cause to be made and levied the sum of fifty-eight dollars and twenty-nine cents, which to the said David Watson and Sarah his wife, in our same court, were adjudged for their damages, which they sustained as well by reason of the trespass and ejectment aforesaid, as for their costs and charges about their suit in that behalf expended; whereof the said Francis Bailey, John Mercer, John Messencope, and Joseph Lefevre, are convicted. And have you those moneys before our justices of the circuit court aforesaid, or one or more of them, into the office of the clerk of the circuit court at Lancaster, for the said county, the third Monday in March next, to render to the said David and Sarah for their costs and charges aforesaid; and in what manner you shall execute this our precept, do you make appear to our said judges, into the office of the clerk of the said circuit court, the third Monday in March next aforesaid, and have you then there this writ. Witness, the honorable William Tilghman, esq., doctor of laws, Chief Justice of the Supreme Court of Pennsylvania, the second Monday in December, MDCCCVIII.

JOHN PASSMORE, *C. C. C.*

Endorsed on the writ of habere facias.

1. March term, 1809.

RICHARD FAIRPLAY, lessee of DAVID WATSON and SARAH his wife,
vs.
JOHN FOULPLAY, with notice to FRANCIS BAILEY, JOHN MERCER, JOHN MESSENCOPE, and JOSEPH LEFEVRE.
HOPKINS.

Habere facias possessionem, and fi. fa. for costs - - $58 29
Incld. - - 1 00

$59 29

Costs paid. So answers
EML. RUGART, *Shff*

STATE OF PENNSYLVANIA, *Lancaster County, ss.*

I, Christian Bachman, prothonotary of the court of common [SEAL.] pleas for said county, do certify that the within and foregoing contains a full and correct copy of the whole record of the suit therein stated, with all the proceedings therein had.

In testimony whereof, I have herunto set my hand, and the seal of said court at Lancaster, this eleventh day of May, in the year of our Lord one thousand eight hundred and thirty-three.

CHRISTN. BACHMAN, *Proth'y.*

In the court of common pleas of Lancaster county, in the Commonwealth of Pennsylvania, of the term of August, in the year of our Lord one thousand eight hundred and nine, among other things, it is thus contained:

Hopkins. Montgy. C. Smith.	Lee. of DAVID WATSON and SARAH his wife, vs. JOHN MERCER, FRANCIS BAILEY, JOHN MESSENCOPE, and JOSEPH LEFEVRE.	Caps. trespass, issued April 17th, 1809; served on Bailey, Messencope, and Lefevre. N. E. I, as to Mercer, 16 m. Death of Messencope suggested; Montgomery appears, &c.
No. 1.		

Abs.,	$19
Witnesses,	9 50
Prot.,	7 03
Atty.,	4 33
Shff. rept.,	4 04
	43 90
Pl'tffs' bill,	3 75
	47 65

See con. doc. No. 13.

Half tavern bill returned to F. Bailey. Paid to J. P., by F. Bailey.

Writ of error issued to the Supreme Court.

Jury fund paid shff. R.	$4 00
Prot. in Supreme Court; copy of record	1 50
Do. in Supreme Court	5 15
Cryer in do.	20
Due,	$6 85

Fi. fa. to Jany., 1816. No. 242. Issued January 4th, 1816.

Nov. 22d, 1810, plaintiffs filed an application to have arbitrators chosen on the 10th day of December next. December 10th, 1810, plaintiffs appearing by their agent, Samuel P. Watson, and Francis Bailey, one of the defendants, in person, choose John Buyers, Isaac Ellmaker, Joseph Gest, jun'r., Benjamin Breckbill, jun'r., and John Slaymaker, jun'r., arbitrators, &c., to meet at the house of John Smoker, innkeeper, in Strasburg township, on Thursday, the 3d day of Jan'y next, at 10 o'clock in the forenoon. June 6th, 1811, report filed, finding for plaintiff $600, with legal costs, tavern expenses to be equally borneby the parties. June 25th, 1811, Francis Bailey, one of the defendants, appeals. Francis Bailey, appellant, tent,. in $1,200, Samuel White, of the borough of Lancaster, merchant, tent., in $1,200, as special bail for appellant, cog. 25th June, 1811, taken according to law, cor. John Passmore prot. Appellant affirmed August 19th, 1811; motion to strike out the appeal, and leave to enter judgment against both defendants, (argued) Nov. 25, 1811; motion refused and appeal received. Defendant pleads non cul., issue

and rule for trial: Aug., 1811, continued; Nov., continued; Jan., 1812, continued; April, continued; August, continued; Nov., continued; Jan'y 13, continued. And now, March 2d, 1813, a jury being called, came, to wit: "Martin Mylin, David Witmer, John Brubaker, Jacob Brubaker, Christian Mussleman, Benjamin Deffenderfer, Jacob Rathfong, William Gamber, John Philips, Daniel Balmer, and George King, and G. Wanauer, twelve good and lawful men of the county of Lancaster, who, being duly empannelled, returned elected by ballot chosen, sworn or affirmed, upon their oaths and affirmations, respectively do say, that they find for the plaintiff £528 damages, and six cents costs. Judgment, May 28th, 1814: on argument the Supreme Court reverse the judgment of the court of common pleas in this action, and award a venire facias de novo. November 29th, 1814, motion by C. Smith and W. Montgomery, esquires, to withdraw their appearance as to John Mercer, which was overruled by the court; at the same time motion to amend the pleadings granted by the court. Whereupon, the defendants severally plead not guilty, issue and rule for trial.

And now, November 29th, 1814, a jury being called, came, to wit:

Joseph Bowman, Jacob Landis, Jacob Newswanger, Samuel Erb, John Newcomer, Jacob Breneman, Jacob Miller, Michael Greider, Christian Shenk, jun'r, Martin Meylin, John Eslebach, and Jonathan Fultz, twelve good and lawful men of the county of Lancaster, who, being duly empannelled, returned elected by ballot chosen, and affirmed, upon their solemn affirmations, respectively do say, they find for the plaintiff $1,200 damages, and six cents costs. December 1st, 1814, rule to show cause why the verdict should not be set aside; October 6th, 1815, argued C. A. V.; December 18th, 1815, on advisement, overruled by the court, and judgment Received, Lancaster, January 1st, 1816, of John Passmore, prot., seven hundred and fifty one dollars and fifty cents, the amount of the report of arbitrators filed June 6th, 1811, in favor of plaintiffs for six hundred dollars, together with interest thereon till the 21st day of August last; this sum being paid out of moneys paid into court by the sheriff at the suit of James Baxter vs. Francis Bailey, on an execution to November term, 1815, No. 7.

JAMES HOPKINS, *P. Q.*

I hereby acknowledge to have received full satisfaction for the debt, interest, and plaintiffs' bill in this judgment. Therefore, release the same.

Witness my hand and seal, this 9th day of March, 1816.

SAML. P. WATSON. [SEAL.]

Attest: GEO. HECKERT.

Copy of the precipe.

RICHARD FAIRPLAY, lessee of DAVID WATSON and SARAH his wife,
vs.
JOHN MERCER, FRANCIS BAILEY, JOHN MESSENCOPE, and JOSEPH LEFEVRE.

Issue capias to answer plaintiff in a plea wherefore, with force and arms, *the* broke and entered the close of the plaintiff, situate in Strasburg township, Lancaster county, consisting of one messuage, one barn, one garden, one orchard, one hundred and twenty acres of arable land, and ten acres of

woodland; and the said messuage, barn, garden, orchard, and land, converted to their own use for a long space of time, to wit, from the 1st of April, 1802, till the 1st day of January, 1809, to the plaintiff's great damage, and against our peace, &c.

J. HOPKINS, *P. Q.*

To JNO. PASSMORE, Esq., *Prothon.* (Paid.)

Copy of the writ.

LANCASTER COUNTY, *ss.*

[SEAL.] The Commonwealth of Pennsylvania to the Sheriff of Lancaster county, greeting:

You are hereby commanded that you take the bodies of John Mercer, Francis Bailey, John Messencope, and Joseph Lefevre, so that you have them before our judges of the court of common pleas to be holden for the said county, at Lancaster, on the third Monday in August next, there to answer Richard Fairplay, lessee of David Watson and Sarah his wife, of a plea wherefore, with force and arms, they broke and entered the close of the said Richard, lessee of David and Sarah, as aforesaid, situate in Strasburg township, Lancaster county, consisting of one messuage, one barn, one garden, one orchard, one hundred and twenty acres of arable land, and ten acres of woodland; and the said messuage, barn, garden, orchard, and land converted to their own use for a long space of time, to wit, from the first of April, 1802, till the first day of January, 1809, to the said Richard's, great damage, and against our peace, &c. Hereof fail not. Witness, John Joseph Henry, president of our said court at Lancaster, the 17th day of April, one thousand eight hundred and nine.

JOHN PASSMORE, *Prot.*

Endorsed on the foregoing writ.

1. August term, 1809. RICHARD FAIRPLAY, lessee of DAVID WATSON and SARAH his wife, *vs.* JOHN MERCER, FRANCIS BAILEY, JOHN MESSENCOPE, and JOSEPH LEFEVRE.	Caps. trespass, &c. Served on Francis Bailey, John Messencope, and Joseph Lefevre. John Mercer, N. E. I. 16 miles. So answers EM. REIGART, *Sh'ff.*

HOPKINS.

Copy of the narr.

LANCASTER COUNTY, *ss.*

John Mercer, Francis Bailey, John Messencope, and Joseph Lefevre, were attached to answer Richard Fairplay, lessee of David Watson and Sarah his wife, in a plea wherefore, with force and arms, they broke and entered into one messuage, one barn, one garden, one orchard, one hundred and twenty acres of arable land, and ten acres of woodland, adjoining lands of George Ecker and Pequea creek, with the appurtenances, lying and being in Strasburg township, in the county of Lancaster aforesaid, of the said Richard Fairplay, and expelled and removed the said Richard from

the possession and occupation of the said tenements; and the said Richard, so expelled and removed from his possession and occupation of the same tenements, kept and held out for a long time, and all that time took and received to his own use the issue and profits of the same tenements, of the yearly value of three hundred dollars, and did him, the said Richard, other injury, to his great damage, and against our peace, &c. And whereupon, the said Richard, by James Hopkins, his attorney, complains of the said John Mercer, Francis Bailey, John Messencope, and Joseph Lefevre, on the seventh day of December, in the year of our Lord one thousand eight hundred and four, with force and arms broke and entered into one messuage, one barn, one garden, one orchard, one hundred and twenty acres of arable land, and ten acres of woodland, with the appurtenances, adjoining lands of George Ecker and Pequea creek, lying and being in the township and county aforesaid, of the said Richard, and expelled and removed the said Richard from the possession and occupation of the same tenements; and the said Richard, so expelled and removed from his possession and occupation of the same tenements, kept and held out for a long time, to wit, from the said seventh day of December, in the year of our Lord one thousand eight hundred and four, until the first day of April, in the year of our Lord one thousand eight hundred and nine, and for all that time took and received to his own use all the issues and profits of the same tenements, of the yearly value of three hundred dollars, and other injuries to him did, to his great damage. Wherefore, he saith that he is damnified to the value of fifteen hundred dollars, and therefore he brings his suit, &c.

JOHN DOE,
RICHARD ROE, } *Pledges.*

Endorsed on the narr.

Of August term, 1809, No. 1.

Lessee of DAVID WATSON et ux.,
vs.
JOHN MERCER, FRANCIS BAILEY, JOHN MESSENCOPE, and JOSEPH LEFEVRE.

Trespass narr.

The defendants plead non cul., &c.

Copy of the application to refer.

In the court of common pleas of Lancaster county.

Lee. of DAVID WATSON and SARAH his wife,
vs.
JOHN MERCER, FRANCIS BAILEY, JOHN MSSENCOPE, and JOSEPH LEFEVRE.

Of the term of August *term*, 1809, No. 1.

Action of trespass vi et armis.

I desire you to enter a rule of reference in this action, as it is my determination to have arbitrators chosen on Monday, the 10th day of December next, between the hours of 11 and 12 o'clock in the forenoon, for the trial of all matters in variance between the parties in this suit.

Witness my hand, this 22d day of November, 1810.

SAML P. WATSON.

To the PROTHONOTARY *of Lancaster county.*

Endorsed on the application to refer.

1. August, 1809.

WATSON, *vs.* MERCER et. al. } Application to refer Dec. 10th, 11 and 12 o'clock.

Dec. 10th, 1810. The parties appearing, viz. Watson and Bailey, agree that the No. of arbitrators be 5.

Pltff.	names	John Barkman,	objected.
do.	do.	John Lighton, jr.,	objected.
do.	do.	Nathaniel Ellmaker,	objected.
do.	do.	Nathaniel Lightner, senr.,	objected.
do.	do.	John Byers,	agreed.
do.	do.	John Hopkins, esq.,	objected.
do.	do.	David Witmer, senr.,	objected.
do.	do.	Andrew Caldwell,	objected.
do.	do.	Isaac Eby, sen., Leacock,	objected.
do.	do.	Isaac Ellmaker,	agreed.
Deft.	do.	James Tremble,	objected.
do.	do.	James Houston,	objected.
do.	do.	Emanuel Rugart,	objected.
do.	do.	Samuel Slaymaker,	objected.
do.	do.	Joseph Guest, jun.,	agreed.
do.	do.	Doct. Arthur May,	objected.
do.	do.	John Jordon,	objected.
Defdt.	do.	Benjamin Breckbill, jr.	agreed.
Pltff.	do.	Benjamin Vernon,	objected.
Defdt.	do.	David R. Barton,	objected.
Pltff.	do.	John McCully,	objected.
Defdt.	do.	James Crawford,	objected.
Pltff.	do.	Gen. James Whitehill,	objected.
Defdt.	do.	Henry Breckbill,	objected.
Pltff.	do.	Robert McIlvaine, jr.	objected.
Prot.	do.	John Slaymaker, jr.	agreed.

To meet at the house of John Smoker, in Strasburg township, by agreement of the parties, on Tuesday, the 3d day of January next, at 10 o'clock A. M.

Copy of the rule of reference.

In the court of common pleas of Lancaster county:

[SEAL.] Lee. of DAVID WATSON and SARAH his wife, *vs.* JOHN MERCER, FRANCIS BAILEY, JOHN MESSENCOPE, and JOSEPH LEFEVRE. } Of the term of August, 1809, No. 1. Action of trespass vi et armis for mesne profits.

Agreeably to an act of Assembly, entitled "An act regulating arbitrations," passed the 19th day of March, 1810, all matters in variance between the parties in this action, are referred to John Byers, Isaac Ellmaker, Joseph Guest, junr., Benjamin Breckbill, junr., and John Slaymaker, junr., arbi-

trators chosen by the parties, who are to meet at the house of John Smoker, innkeeper, in the township of Strasburg, in said county, on Tuesday the 3d day of January next, at 10 o'clock in the forenoon of said day; and they, or a majority of them, (or such other persons as may be substituted in pursuance of said act, are to make report of their determination into the Prothonotary's office at Lancaster, within seven days after they shall have agreed upon the same.

Attest: JOHN PASSMORE, *Proth.*

PROTHONOTARY'S OFFICE, LANCASTER, *Dec. 10th*, 1810.

The Death of John Messencope suggested.

We, the *s c* arbitrators named in the above order, do report that we have *ac t* heard the proofs and allegations of the parties, and duly considered the same, and do award that the defendants pay the plaintiff the sum of six hundred dollars, with legal costs; tavern expenses to be ually borne by the parties. Witness our hands and seals, this fourth day of June, A. D. 1811.

JOHN BYERS. [SEAL.]
ISAAC ELLMAKER. [SEAL.]
JOSEPH GEST, Jr. [SEAL.]
BENJ. BRECKBILL, Jr. [SEAL.]
JNO. SLAYMAKER, Jr. [SEAL.]

Witnesses' attendance.

Jacob Harris,	3 days.
James Dunlop,	3
David Trout,	4
Joseph Lefever,	2
Geo. Eckert, Esq.,	2
John Yoder,	1
Danl. McFadden,	3

Arbitrators' attendance.

John Byers,	4 days.
Isaac Ellmaker,	3
Joseph Gest, jr.,	4
Benj. Breckbill, jr.,	4
Jno. Slaymaker, jr.,	4

Endorsed on the foregoing rule of reference.

1. August, 1809.

WATSON, *vs.* MERCER and others. } Rule of reference.

The arbitrators will please to unite their report on this paper. Report filed June 6th, 1811.

June 25th, 1811. I appeal from the within award of the arbitrators.

FRANCIS BAILEY.

Copy of the appeal, &c.

Lessee of DAVID WATSON and SARAH his wife, *vs.* JOHN MERCER, FRANCIS BAILEY, JOHN MESSENCOPE, and JOSEPH LEFEVRE. } Action of trespass for mesne profits, &c., in the common pleas of Lancaster county, to August term, 1809, No. 1.

Death of John Messencope suggested.

Referred to arbitrators. and, June 6th, 1811, report filed in the Prothonotary's office. Francis Bailey, one of the defendants above named, appeals from the award of the arbitrators above mentioned, June 25th, 1811.

LANCASTER COUNTY, *ss.*

Francis Bailey, being duly affirmed according to law, says that he does not enter the appeal aforesaid for the purpose of delay, but because he firmly believes injustice has been done by the award of the arbitrators.

FRANCIS BAILEY.

Affirmed and subscribed, June 25th, 1811. Coram me.

JOHN PASSMORE, *Prot.*

Francis Bailey, tent., in $1,200; Samuel White, of the borough of Lancaster, merchant, tent., in $1,200, as special bail for the said Francis Bailey.

To the plaintiffs above named, upon condition that if the plaintiff in the event of the suit shall recover a sum equal to or greater than the report of the arbitrators, the said defendant shall pay all costs that may accrue in consequence of this appeal, together with the sum awarded by the arbitrators, with one dollar per day for each and every day that shall be lost by the plaintiffs in attending to the said appeal; or, in default thereof, shall surrender the said defendant to the jail of the county of Lancaster, in discharge of this recognizance.

Taken June 25, 1811. Coram me.

JOHN PASSMORE, *Prot.*

Copy of the notes of testimony.

Hopkins.	Lessee of DAVID WATSON and wife, *vs.* JOHN MERCER, FRANCIS BAILEY, JOHN MESSENCOPE, and JOSEPH LEFEVRE.	Aug., 1809, No. 1, trespass for mesne profits, dft. pleads non cul. Issue and rule for trial.

March 2d, John Messencope's death suggested.
Clerk reads declaration.

Mr. Hopkins opens for plaintiff—property held from December, 1804, until spring of 1809, 120 acres, in the township of Strasburg.

Reads record of original suit brought in common pleas, and removes into circuit court, March t., 1805, No. 4. Richard Fairplay, lessee of Watson and wife, *vs.* Foulplay, with notice to Mercer, Bailey, Messencope, and Lefevre. Ejectment 13th May, 1807. Trial and verdict for pltff.; motion for new trial overruled; Decr. 31, 1808. Judgment affirmed, entry and ouster laid 7th Decr., 1804. Possession delivered in February, 1809.

George Eckert, esquire, sw. Watson moved to it in the winter of 1809; 1808–9, after new-years. I am well acquainted with the land; I have land adjoining. From 1804 to 1809, it might be worth £100, or $300 a year. I make this calculation, *supposing* tenant to make necessary repairs, and exclusive of taxes; I mean to keep it in repair. I don't include repairs to the buildings. John Mercer lived there in his father's lifetime, and until the day before Watson took possession. Francis Bailey and Joseph Lefevre never lived on the place to my knowledge. There was a crop in the ground when Mercer moved away; can't say how much: I think Watson reaped it. I do not recollect how many fields had grain. I remember one field of rye, 6 or 7 acres. Never heard Watson mention the quantity. I never knew the place a year without grain in it. It was always regularly farmed.

George Eckert, sw. I adjoin this tract. I reckon it would be worth about £100 a year, keeping the fences in repair, landlord to pay the taxes. I am well acquainted with the land. I have lived alongside of it for 30 years. My son George has lived there all along, too. John Mercer lived on the place from 1804 to 1809. Neither Francis Bailey nor Joseph Lefevre ever lived on the land. There was 6 or 8 acres of rye when Watson took possession; some other, but I don't remember it right; perhaps some wheat. I believe Watson got that crop. It was farmed every year.

Daniel McFadden, sw. I live adjoining the land. Watson got possession, I think to the beginning of Feby., 1809. Worth, at a fair rent, between 1804 to 1809, perhaps $300 a year, tenant to keep the fences in order, nothing else; owner to pay the taxes. I have lived adjoining 8 years; but I knew the place before. I don't recollect what quantity of grain was in. Mercer sd. he would not have taken $300. It was put in 3 different fields; part of fields only. Neither Mr. Bailey nor Mr. Lefevre ever had possession of it.

John Yoder, sw. I was raised within a mile and a half of this place. From 1804 to 1809, a fair rent would be about $300; tenant leave the fences in the same repair he got them in, owner to pay the taxes. I don't recollect what crop was in it when Watson took possession. I knew there was a crop. I never knew it any year without being farmed.

Isaac Vanleer, sw. I know this property. I lived alongside of it from the spring of 1804 till the spring of 1808. Fair rent from 1804 to 1809, would be £100; tenant to leave as he got it; tenant to pay the taxes.

James Dunlap, sw. I know this place. I pd. $300 for one of same *size*, no better. I lived there at the same time. Mercer lived on this farm from 1804 to 1809. I drew 500 rails a year from the compass, 9 miles, to keep the fence in repair. The landlord paid the taxes. I cannot tell the number of acres Mercer had grain in when Watson took possession; not more than 15 acres; not a whole field. It was farmed every year.

George Eckert, esq., again called by deft.: never knew Mr. Watson to be in possession until he got possession from Mercer, none of the Watsons were in possession, to my knowledge, before the recovery of possession.

Daniel McFadden, again for pl'tff. John Mercer told me he rented from Mr. Bailey; he told me he paid Mr. Bailey the rent.

The above copy of the notes of testimony taken by me on the trial, is filed at the request of defendants' counsel.

WALTER FRANKLIN.

Copy of the notes of charge.

WATSON and Wife,
vs.
MERCER and others. } Notes of charge.

It appears in this case that an ejectment was brought by the lessee of David Watson and wife, against Richard Playfoul, to recover one hundred and twenty acres of land in the township of Strasburg, in this county; that notice was given to the casual ejector to John Mercer, Francis Bailey, John Messencope, and Joseph Lefevre. That a trial took place; judgment was rendered in favor of the pltffs. for the whole quantity of land claimed, and possession was afterwards obtained by them. The present suit was instituted to recover the profits alleged to have been received by the defendants

during the time they held this land in opposition to the right of the pltffs. To entitle plaintiffs to recover in this action, it is necessary for them to prove the value of the land, and the occupation of it by defendants. With respect to John Mercer, he is proved by witnesses to have been in the posseesion of the land, and evidence has also been given to you that John Mercer paid rent to Francis Bailey

As to Joseph Lefevre, there is no proof of his ever having been in possession of the land, or receiving any of the profits therefrom, except that which is founded upon the proceedings in ejectment. An ejectment, in order to entitle a *to entitle a* plaintiff to obtain a verdict, it is absolutely necessary that he should prove that the party from whom he claims the land was in possession of it at the time the suit was commenced.

A judgment in ejectment, therefore, is conclusive evidence that the person against whom a recovery was had, was in possession at the time of the service of the declaration.

If, then, Joseph Lefevre were a party defendant in the ejectment brought by the present plaintiffs, there would be no difficulty in the proof of his having been in possession of the property at the time the ejectment was commenced.

The suit was instituted by the lessee of the plaintiffs against Richard Playfoul, with notice to John Mercer, Francis Bailey, John Messencope, and Joseph Lefevre. Mr. Montgomery and Mr. Smith appears, take defenee, enter into the common rule, and plead not guilty; but it does not appear that the name of the casual ejector was stricken out of the declaration, and the names of Mercer, Messencope, Bailey, and Lefevre, substituted: notwithstanding this omission, I think it manifest, from all the proceedings, that the verdict was not against the casual ejector, but against the persons for whom Mr. Smith and Mr. Montgomery appeared, and those were the defendants in the present suit. The question of title was discussed, and the cause was tried on its merits. The principle just laid down, therefore, applies, in my opinion, to this case. You are judges of the amount which ought to be recovered by the pltff., and your determination must depend upon the evidence given: there is no rule which compels you to unite all the defendants in the same decision, and you have a right to separate them in your verdict, if you think the evidence will warrant you in so doing.

Filed at the request of defendants' counsel.

WALTER FRANKLIN.

Copy of Pl'ff's Att'ys calculation.

WATSON,
vs.
BAILEY, MERCER, and LEFEVRE.

Value for year 1805 - - - - - -			£100 0 0
Interest from 1st April, 1806, until Nov. 30th, 1814 -			45 9 0
Value for 1806 - - - - -	£100		
Interest from 1st April, 1807, till 30th of Nov. 1814	39 9		
			139 9 0
Value for 1807 - - - - -	£100		
Interest from 1st of April, 1808, till 30th of Nov., 1814	33 9		
			133 9 0

Value for 1808 - - - - -	£100	
Interest from 1st of April, 1809, till Nov. 30th, 1814	27 9	
		127 9 0
		£545 16

Endorsed on the foregoing calculation.

1. August, 1809.
Pl'tff's. att'ys calculation filed December 1st, 1814, by direction of Mr Montgomery.

Copy of the errors assigned.

WATSON and wife,
vs.
MERCER, BAILEY, and LEFEVRE. } Errors assigned.

1. The judge erred in directing the jury that the verdict and judgment were conclusive evidence that Joseph Lefevre was in possession of the premises at the time the suit was commenced; and it appears by the evidence requested to be filed, that it was expressly proved he never had been in possession.

2. That it does not appear by the record, that Joseph Lefevre was a party to the record, or that any defence or appearance was entered for him; the jndge erred, therefore, in his opinion delivered on this point.

3. If Joseph Lefevre had been made a party, yet it was necessary to prove when he became a party, and how long he held possession; but there being no such proof, the judge erred in directing the jury that the verdict and judgment were conclusive evidence of his having been in possession, and there is manifest error in the judgment rendered for the damages, which go to the whole time laid in the declaration, and before the appearance and entry into the common rule.

4. That if the said verdict and judgment were evidence of Joseph Lefevre having been in possession at the time of the service of the writ, yet it was no evidence of such possession having been continued, and the judge should have directed the jury that, as there was no evidence of the continuance of possession, they ought to find nominal damages only.

C. SMITH,
W. MONTGOMERY,
For John Mercer, Francis Bailey, and Joseph Lefevre.

Copy of the affidavit and precipe for writ of error.

RICHARD FAIRPLAY, lessee of
DAVID WATSON and wife,
vs.
JOHN MERCER, FRANCIS BAILEY, and JOSEPH LEFEVRE.
John Passmore, Esq.

In the common pleas of Lancaster county.
Action for mesne profits.
Issue writ of errror to remove all proceedings in the cause.

W. MONTGOMERY, *P. Q.*
C. SMITH.

Came before me, the President of the courts of common pleas, &c., of the second judicial district of the Commonwealth of Pennsylvania, Joseph

Lefevre, one of the defendants above named, who being sworn, saith that the above mentioned writ of error is not taken for the purpose of delay.

JOSEPH LEFEVRE.

Sworn and subscribed, this 19th of March, 1813, before me, in open court.

WALTER FRANKLIN.

Endorsed on the foregoing precipe, &c.

8. May term, 1810.

MERCER and Wife, *vs.* WATSON. } Affidavit and precipe filed March 19th, 1813.

Copy of the recognizance.

JOHN MERCER, FRANCIS BAILEY, and JOSEPH LEFEVRE, pltffs. in error, *vs.* The lessee of DAVID WATSON and wife, defendants in error. } Writ of error to the common pleas of Lancaster county, to May term, 1813. No.

We acknowledge to owe and to be indebted to the lessee of David Watson and wife, defendants in error, in the sum of three thousand dollars of our goods and chattels, lands and tenements, jointly and severally, to be made and levied to the use of the said lessee of David Watson and wife, their executors, administrators, and assigns, if default be made in the following condition:

Whereas the said John Mercer, Francis Bailey, and Joseph Lefevre, have prosecuted a writ of error from the Lancaster district of the Supreme Court, to the judges of the court of common pleas of Lancaster county, directed on a judgment obtained against the said John Mercer, Francis Bailey, and Joseph Lefevre, at the suit of the said lessee of David Watson and wife.

Now, the condition of this recognizance is such, that if the said John Mercer, Francis Bailey, and Joseph Lefevre, shall prosecute the said writ of error with effect, and, in case the said judgment shall be affirmed, shall pay the damages and costs in the former judgment affirmed, and also damages and costs to be awarded for delay of execution, then this recognizance to be void, otherwise of force.

JOSEPH LEFEVRE.
JOHN JORDON.
ADM. REIGART, Jr.

Taken and acknowledged the nineteenth day of March, 1813, before

WALTER FRANKLIN.

Endorsed on the foregoing recognizance.

8. May term, 18.

JAMES MERCER, FRANCIS BAILEY, and JOSEPH LEFEVRE, pltffs. in error, *vs.* The lessee of DAVID WATSON and wife, defdts. in error. } Recognizance.

Copy of the writ of error.

PENNSYLVANIA, *sc.*

The Commonwealth of Pennsylvania to the judges of the
[SEAL.] court of common pleas for the county of Lancaster, greeting:

Because, in the record and process, and in rendering the judgment in a certain plaint which was in our said court before the judge of the same court, by our writ, between the lessee of David Watson and wife, plaintiff, and John Mercer, Francis Bailey, and Joseph Lefevre, defendants, as it is said, manifest error hath intervened to the great damage of the said John Mercer, Francis Bailey, and Joseph Lefevre, as by the complaint of the same John Mercer, Francis Bailey, and Joseph Lefevre, we have received information. We, willing that, if any error be therein, it should be corrected, and that speedy justice be done to the parties in this part, do command you that if judgment, as it is said, be rendered in the said plea, then the record and process, and all things touching the same under your seal, distinctly and openly, you have before the judges of our Supreme Court at a Supreme Court to be held at Lancaster, in and for the Lancaster district of said Commonwealth, on the third Monday of May next, and this writ, that the record and process aforesaid being inspected, we may further cause to be done what of right, and according to our laws and customs, ought.

Witness, the honorable William Tilghman, esquire, Chief Justice of our said Supreme Court at Lancaster, the thirtieth in the year of our Lord one thousand eight hundred and twelve, and of the Commonwealth the thirty-sixth.

JOHN PASSMORE,
Prothonotary of the Lancaster District.

Allowed by J. YEATES.

Endorsed on the writ of error.

JOHN MERCER, FRANCIS BAILEY, and JOSEPH LEFEVRE, pltffs. in error,
vs.
The lessee of DAVID WATSON and Wife, defdts. in error.

Writ of error to the court of common pleas of Lancaster county.

To the honorable judges within named:

We, the judges of the court of common pleas within mentioned, do certify and send the plea within mentioned, with all things touching the same, so full and entire as before us they remain in a certain schedule to this writ annexed.

So answer

WALTER FRANKLIN.
JACOB HEBSHMAN.

Copy of the decree of the Supreme Court.

In the Lancaster district of the Supreme Court for the Commonwealth of Pennsylvania, of May term, 1813. No. 8.

JOHN MERCER, FRANCIS BAILEY, and JOSEPH LEFEVRE, pltffs. in error.
vs.
The lessee of DAVID WATSON and Wife, defdts. in error.

Writ of error to the court of common pleas of Lancaster county.

[SEAL.] And now, May 28th, 1814, at a Supreme Court held at Lancaster, for said district, before the honorable William Tilghman, Chief Justice, and Jasper Yeates and H. H. Brackenridge, esquires, assistant justices of said court. On argument, the court reverse the judgment of the court of common pleas of Lancaster county in this action, and award a venire facias de novo.

Attest: JOHN PASSMORE, *Prot.*

Endorsed on the foregoing decree.

1. August term, 1809, com. pleas.
8. May term, 1813, Sup. Cot.

JOHN MERCER, F. BAILEY, and JOSEPH LFFEVRE, pltffs. in error.
vs.
The lessee of DAVID WATSON and Wife, defdts. in error.

Decree of the Supreme Court.

Prot. copy of record - - - - - -	$1 50
Do. in Sup. Cot. - - - - - -	5 15
Cryer - - - - - - -	20
Due,	$6 85

MONTGY. and C. SMITH, for P. in E.

Copy of the fi. fa.

LANCASTER COUNTY, *ss.*

[SEAL.] The Commonwealth of Pennsylvania to the sheriff of Lancaster county, greeting:

We command you that, of the goods and chattels, lands and tenements, of John Mercer, Francis Bailey, and Joseph Lefevre, in your bailiwick, you cause to be made and levied, as well the sum of twelve hundred dollars, which the lessee of David Watson, and Sarah his wife, lately in our county court of common pleas, before our judges thereof, at Lancaster, recovered against them for their damages, which they sustained by occasion of a certain promise and assumption by the aforesaid John, Francis, and Joseph, made and not performed, as one hundred and two dollars and three cents, which to the said lessee of David Watson and wife, in our same court, were adjudged for their costs and charges by them about their suit in that behalf expended: whereof, the said John, Francis, and Joseph, are convict; and have you those moneys before our judges at Lancaster, at our county court of common pleas, then to be held on the third Monday in January next, to render to the said lessee of David Watson and wife, for their damages and costs and charges aforesaid. And have you then there this writ.

Witness, the honorable Walter Franklin. esq., president of the said court at Lancaster, the twenty-third day of December, in the year of our Lord one thousand eight hundred and fifteen.

JOHN PASSMORE, *Prot.*

Endorsed on the fi. fa.:

242. January term, 1816.
Lessee of DAVID WATSON and SARAH his wife,
vs.
JOHN MERCER, FRANCIS BAILEY, and JOSEPH LEFEVRE.
Original to August 1809, No. 1.

J. HOPKINS.

Damages - - - - - - -	$1,200 00
Interest from 29th Nov. 1814, until 21st Aug. 1815 -	53 38
	$1,253 38
Credit by money lent from sale of the real estate of Francis Bailey - - - - - - -	751 50
	$501 80
Int. thence till Dec. 18th, 1815, when judgment was rendered - - - - - - -	10 03
Balance due - -	$591 85

Interest from Dec. 18th, 1815.

Prothy. com. pleas - - - - - -	$7 84
Do. Supreme Court - - - - - -	6 65
Cryer - - - - - - -	20
Attorney - - - - - -	4 00
Shff. H. R. - - - - - -	2 20
Plaintiff's bill and witnesses - - - - -	73 14
Do. paid juries - - - - - -	8 00
Prothy. increase - - - - - -	1 00
	$103 03

Levy the personal property of the def'ts.
Levied on *on* defendant's personal property. So answers,
GEORGE HAMBRIGHT, *Sheriff.*

Debt, interest, and costs paid in full. So answers,
GEORGE HAMBRIGHT *Sheriff.*

STATE OF PENNSYLVANIA, *Lancaster county, ss.*

I, Christian Bachman, prothonotary of the court of common [SEAL.] pleas of said county, do certify that the within and foregoing contains a full and correct copy of the whole record of the suit therein stated, wherein the lessee of David Watson and Sarah his wife, are plaintiffs, and John Mercer and others, are defendants, with all the proceedings therein had.

In testimony whereof, I have hereunto set my hand, and the seal of said court, at Lancaster, this eleventh day of May, in the year of our Lord one thousand eight hundred and thirty-three.

C. BACHMAN, *Prothy.*

In the court of common pleas of Lancaster county, in the Commonwealth of Pennsylvania, of the term of January, in the year of our Lord one thousand eight hundred and eighteen, it is thus contained:

Copy of the docket entry.

Rogers.	JOHN MERCER and MARGARET MERCER.	Sums. in ejectment issued Dec. 2d, 1817. "13 m. served by copy." April 27th, 1818, defendant pleads not guilty. Issue and rule for trial.
54	*vs.*	
Hopkins.	SAMUEL WATSON.	
Precipe filed.		

Continued from term to term, until August term, 1818; and now, October 7th, 1818, at an adjourned court, a jury being called, came to wit, Isaac Hubley, Abraham Huber, John Henderson, Casper Snyder, William Ewing, Jacob Haines, John Kendal, George Wertz, David Brady, Christian Hen, John Grebill, and John Wolff, twelve good and lawful men of the county of Lancaster, who, being duly empannelled, returned, elected by ballot, chosen, sworn or affirmed, upon their oths and affirmations respectively do say, that they find for the plaintiffs' with six cents damages and six cents costs. October 8th, 1818, on motion of Mr. Hopkins, and reasons for a new trial filed. Rule to show cause why a new trial should not be granted. 26th April, 1819, motion withdrawn, and judgment for plaintiffs. Copy of the president's notes of testimony and admissions, the points on which the court were requested to charge the jury, and the charge of the court filed of record, October 9th, 1818, and annexed to the bill of exceptions. April 26th, 1819, on motion of Mr. Hopkins, the court appoint John Cooper, of Leacock township, guardian *ad litem* in this suit, the defendant being now dead.

Writ of error to remove the proceedings to the Supreme Court, to May term, 1819. Judgment of the court of common pleas reversed by Supreme Court; (see decree filed, Dec. 6th, 1826.)

March 3d, 1823.—Plaintiffs suffer a non-suit.

At. due prot. Pass. - - - - - -	$2 27
Testes for pltffs. Joseph Lefevre, sw. bill of exceptions filed	
Prot. Prothy - - - - - -	$6 87
Prot. M. - . - - - - -	$2 25

Copy of the precipe and statement.

JOHN MERCER and MARGARET MERCER,
vs.
SAMUEL WATSON.

Issue summons in ejectment, that Samuel Watson appear before the judges of the court of common pleas in and for the county of Lancaster, to be holden at Lancaster, on Monday the day of next, then and there to answer to a certain complaint made by John Mercer, and Margaret Mercer, that he, the said Samuel Watson, now hath in his actual possession a tract of land situate in Strasburg township, in the said county, containing forty-one acres and a half, or thereabouts; beginning *a* white oak, a corner of George Accord's land; thence by the same, east one hundred and

six perches, to a post; thence south fifteen perches, to a post; thence by the lands of the heirs of Joseph Patterson, deceased, west one hundred and twenty four perches, to a post; thence by the same, north one hundred and ten perches, to a post; thence by the same, west five perches, to a post; thence by the same, north one hundred thirty five and a half perches, to Pequea creek; thence up said creek, twenty three perches and five links, to a post; thence by land of George Accord aforesaid, south two hundred and twenty-eight perches, to the beginning, the right of possession, or title to which they, the said John Mercer and Margaret say—in them, and not in the said Samuel Watson; all which they aver they are prepared to prove before the same court.

MOLTON C. ROGERS,
Atty. for Plff.

JOHN PASSMORE, Esq.

Endorsed on the foregoing precipe and statement:

54. January term, 1818.
JOHN MERCER and MARGARET MERCER, *vs.* SAMUEL WATSON. } Precipe and statement filed Nov. 29th, 1817.

Copy of the writ of ejectment.

LANCASTER COUNTY, *ss.*

The commonwealth of Pennsylvania to the sheriff of Lancaster county, greeting:

[SEAL]

You are hereby commanded that you summon Samuel Watson to be and appear before the judges of the court of common pleas in and for said county, to be holden at Lancaster, on the third Monday in January next, then and there to answer to a certain complaint made by John Mercer, and Margaret Mercer, that he, the said Samuel Watson, now hath in his actual possession a tract of land situate in Strasburg township, Lancaster county, containing forty-one acres and a half, or thereabouts, beginning at a white oak, a corner of George Accord's land; thence by the same, east one hundred and sixty perches, to a post; thence south fifteen perches to a post; thence by lands of the heirs of Joseph Patterson, deceased, west one hundred and twenty-four perches, to a post; thence by the same, north one hundred and ten perches, to a post; thence by the same, west five perches, to a post; thence by the same, north one hundred thirty-five and a half perches, to Pequea creek; thence up said creek twenty-three perches and five links, to a post; thence by land of George Accord aforesaid, south two hundred and twenty-eight perches, to the place of beginning, the right of possession or title to which they, the said John Mercer and Margaret Mercer, saith is in them, and not in the said Samuel Watson. All which they, the said John Mercer and Margaret Mercer, avereth they are prepared to prove before our said court. Hereof fail not.

Witness, the honorable Walter Franklin, esquire, President of our said court, at Lancaster, the twenty-ninth day of November, in the year of our Lord one thousand eight hundred and seventeen.

JOHN PASSMORE, *Prot.*

Endorsed on the foregoing writ:

54. January term, 1818.

JOHN MERCER and MARGARET MERCER, *vs.* SAMUEL WATSON. } Sums. in ejectment. 13 miles served by copy. So answers, GEORGE HAMBRIGHT, *Sheriff.*

ROGERS.

Copy of the agreement of Attorneys relative to the evidence of Joseph Lefevre.

JOHN MERCER and MARGARET MERCER, *vs.* SAMUEL WATSON. } In the common pleas of Lancaster county, of January term, 1818. No. 54.

It is admitted in this cause that James Mercer died, leaving by Sarah, his first wife, five children, to wit, Samuel, Alexander, John, William, and Margaret. Before the commencement of the above suit, it is also admitted that Samuel, Alexander, and William, were deceased. Samuel and Alexander left issue, and William died intestate, unmarried, and without issue. It is also admitted that the plaintiffs in this cause are two of the children of the said James Mercer, and Sarah his wife.

JAMES BUCHANAN,
Atty. for Pltff.
JAMES HOPKINS, *P. D.*

Endorsed on the foregoing agreement:

54. January term, 1818.

MERCER, *vs.* WATSON. } Agreement of attorneys relative to the evidence of Joseph Lefevre, filed October 7th, 1818.

Copy of the notes.

LANCASTER, *Wednesday, October 7th*, 1818, *A. M.*

President alone:

JOHN MERCER and MARGARET MERCER, *vs.* SAMUEL WATSON. } January 7th, 1818, No. 54. Defendant pleads not guilty. Issue and rule for trial. Suit instituted, 2d December, 1817.

Admitted that James Mercer died, leaving by Sarah, his first wife, five children, to wit, Samuel, Alexander, John, William, and Margaret. Before the commencement of the above suit, it is also admitted that Samuel, Alexander, and William, were deceased; Samuel, and Alexander left issue, and William died intestate, unmarried, and without issue. It is also admitted that the plaintiffs in this cause are two of the children of the said James Mercer and Sarah his wife, (see paper filed, signed, James Buchanan, atty. for pltffs., James Hopkins, for defendant.)

Clerk reads statement of the pltffs.

Mr. Rogers opens for the plaintiffs.

October 19, 1743, patent.

Admitted, that the estate was vested in Margaret Patterson, in fee, who afterwards intermarried with James Mercer.

Deed, 30th May, 1785.—James Mercer, and Margaret his wife, to Nathan Thompson in fee, consideration £800, for the estate in question: receipt for consideration money.

Reads acknowledgment, recorded 16th June, 1785.

Deed, 30th May, 1785.—Nathan Thompson to James Mercer in fee; consideration £1000 for same estate, on terms specified in the deed: receipt for consideration money.

Acknowledged same day, and recorded 16th June, 1785.

Plaintiffs claim as heirs of James Mercer: reads admission as per agreement above copied.

Mr. Hopkins for defendant:

Defendant is the son of a sister of Margaret Mercer. Margaret Mercer died, without issue, and defendant is her heir at law. Sarah, the sister of Margaret Mercer, married David Watson, and the defendant is her only child. He is entitled, unless the deeds which have just been read, conveyed away the estate legally. The law prescribes the only mode in which the estate of a married woman can be transferred. This law not complied with: reads act of Assembly, 1. Dall. ed. P. L. 535; 24th February, 1770, acknowledgment not conformable: contents not stated, to be made known to her: not stated that she executed it voluntarily, and without coercion, &c.: reads record of suit in circuit court—David Watson, and Sarah his wife, vs. the casual ejector, with notice to John Mercer, Francis Bailey, John Messencope, and Joseph Lefevre, to March t., 1805; No. 4. May 13th, 1807, verdict for pltffs.

Motion for new trial overruled; appeal to the Supreme Court: admitted, that the defendant, Samuel Watson, is the only child of Sarah, the sister of Margaret Mercer, and that he is the sole heir at law of Margaret Mercer.

Mr. Hopkins reads record of proceedings in Supreme Court, to January t., 1807; December 31, 1808, judgment affirmed, and plaintiffs put into possession: case reported in 1 Binney, 470: reads will of James Mercer, to show that John Mercer was one of the executors of James Mercer, dated 2d November, 1803: executors authorized to sell estate. The other executors were Francis Bailey, John Messencope, and Joseph Lefevre: it also shows, as it is alleged by Mr. Hopkins, that he had disposed of the estate, and thereby plaintiffs intercepted, and destroyed the plaintiffs' claim as heirs at law.

Mr. Rogers reads renunciation of Joseph Lefevre, 6th Dec., 1804; caveat of John Mercer, renunciation of John Messencope, 8th Dec., 1804; certificate that, on the 10th Dec., 1804, will was proved, and letters testamentary granted to John Mercer and Francis Bailey.

Joseph Lefevre swn. Francis Bailey died the latter end of September was a year; at any rate before the election, and before the suit brought: he was dead when I was in Philadelphia. I was there the first or second week in November, and he was dead then some weeks. The heirs employed me to bring this suit; I am not interested in this suit; am not to receive any benefit from this suit: I expect to get back the money I was made to pay; I am not interested in the event of this suit. The damages were assessed against me by a jury: filed at the request of defendant's counsel.

WALTER FRANKLIN.

October 9th, 1818.

Copy of defendant's points.

JOHN MERCER and MARGARET MERCER, *vs.* SAMUEL WATSON. } In the common pleas of Lancaster county.

The court are respectfully requested to give the following points in charge to the jury, and file it with the whole evidence and admission given, and appearing on his notes of record:

1st. That the deed dated the 30th March, 1785, from James Mercer, and Margaret his wife, to N. Thompson, is not duly acknowledged, to convey the estate of inheritance of Margaret Mercer, so as to destroy the descent of the estate to the defendant, her sole heir at law.

2d. That this action cannot be sustained, as James Mercer has devised all his real estate which intercepts and destroys all the plaintiff's claim as heirs at law.

3d. To give it in charge to the jury, that, where a justice or other officer is called upon to do an ex parte act affecting the rights of others, and in discharge of that duty he states what he has done, there can be no intendment or presumption that more was done than is stated, and that in case of the acknowledgement on the deed from Mercer and wife to Thompson, the justice having stated what he did, it cant. be intended or presumed he did more than he has so stated.

JAMES HOPKINS, *P. D.*

October 7th, 1818.

Copy of plaintiff's points.

JOHN MERCER and MARGARET MERCER, *vs.* SAMUEL WATSON. } In the common pleas of Lancaster county, Jan. 1818, No. 54. Ejectment.

The counsel for the plaintiffs respectfully request the court to charge the jury on the following points:

1st. That the acknowledgment of Margaret Mercer and James Mercer, of the deed, dated the thirtieth day of May, seventeen hundred and eighty-five, by James Mercer and Margaret Mercer, to Nathan Thompson, is good, and not defective, and that, by said deed, the interest of Margaret and James Mercer was divested, and that the same was by said conveyance vested in the said Nathan Thompson.

2d. That when an act of Assembly makes it the duty of a justice of the peace or a judge of the court to do a judicial act, and he certifies that he has done it, the presumption is, that he has done all that he was required by law to do.

3d. That John Mercer and Margaret Mercer have a right to maintain this suit in their character of ces*tur*e que trust, the person beneficially interested in said estate; or that, John Mercer can maintain it as surviving executor of James Mercer, deceased.

MOLTON C. ROGERS,
Atty. ss.

Copy of the charge of the court.

JOHN MERCER and MARGARET MERCER, *vs.* SAMUEL WATSON. } January term, 1818, No. 54. Charge of court delivered, 8th October, 1818.

This is a controversy between John Mercer and Margaret Mercer, claiming the land in dispute in the rights *delivered* to them from the deceased, James Mercer, their father, and Samuel Watson, who claims it as the sole heir at law of Margaret Mercer, who was the wife of James Mercer.

This estate indisputably belonged, at one time, to Margaret Mercer. It was invested in her while she was Margaret Patterson; and after her intermarriage with James Mercer, she executed a deed for it, in conjunction with her husband, to Nathan Thompson, who conveyed all his right and title to James Mercer in fee. The first objection to the plaintiff's right of recovery is, that this action cannot be sustained, as James Mercer had devised all his real estate, which intercepts and destroys the plaintiffs' claim as heirs at law.

The court do not think there is much weight in this objection: where a testator has devised his estate to be sold, until it be sold, it descends to his heirs at law. I am of opinion that John and Margaret Mercer have a right to maintain this suit, being the persons beneficially interested in this estate, and that John Mercer, being the sole executor of the last will and testament of James Mercer, and joining in the action, are circumstances which of themselves would prevent any legal objection which might otherwise arise on the foundation of that devise.

The second objection, and that which has been most strenuously insisted on, is, that the deed bearing date the thirtieth of March, seventeen hundred and eighty-five, from James Mercer, and Margaret his wife, to Nathan Thompson, is not duly acknowledged so as to destroy the descent of the estate to the defendant, her sole heir at law. In the case of Watson vs. Bailey, (1. Binn. 470,) the point came before the Supreme Court, and they decided upon this very acknowledgment that it was defective, and that, therefore, the deed did not pass the estate of the wife.

Had the case of Watson and Bailey retained its original authority, and the arguments in support of the decision remained unshaken by sentiments subsequently expressed by the judges who decided it, I should have considered the law as settled by the highest tribunal in the State, and, whatever might have been my own opinion, would have laid down the law as it was declared to be in that case. But it does appear to me that the principles which governed the court in the case of Watson and Bailey have been departed from in subsequent decisions, and that, in conformity to the reasons on which those decisions were founded, if the case were now before them, they would decide it in a manner different from that in which it was formerly determined. I therefore, with the most respectful deference for the sentiments of the judges who decided the case of Watson and Bailey, consider myself at full liberty to express my own opinion, formed upon this point after the fullest consideration which I have been able to give it. It is as follows: that the acknowledgment of Margaret Mercer and James Mercer, of the deed dated the thirtieth day of May, one thousand seven hundred and eighty-five, made by James Mercer and Margaret Mercer, to Nathan Thompson, is good and sufficient in law, and, by the said deed, the interest

of Margaret and James Mercer was divested, and the same transferred to, and invested in the said Nathan Thompson.

I am supported by the principle, that where the law trusts to a judicial officer the power to do a certain particular, and he certifies that he has done it, every thing forming that particular is presumed to have been done. If you concur with the court in these sentiments, your verdict will be in favor of the plaintiffs; otherwise, you will find for the defendant.

Filed at the request of defendant's counsel.

WALTER FRANKLIN.

October 9th, 1818.

Copy of the bill of exceptions.

JOHN MERCER and MARGARET MERCER, *vs.* SAMUEL WATSON. } In the common pleas of Lancaster county.

The cause being at issue, and the jury sworn, prout the record, the plaintiff gave in evidence to support the issue taken on his part, the admissions, testimony, and evidence, contained upon the judge's notes, prout the admissions, testimony, and the two deeds thereon, all of which are hereunto annexed, and to be taken as part of this bill, prout the same, and then rested; whereupon, the defendant, to maintain the issue upon his part, gave in evidence the record of a recovery in ejectment in the circuit court of Lancaster county, brought by the ancestors of the present defendant, whose sole heir he is, against Francis Bailey, John Mercer, John Messencope, and Joseph Lefevre, who were nominated and appointed executors of the last will and testament of James Mercer, the grantor in one and grantee in the other, of the deeds given in evidence on the part of the plaintiffs, and an appeal from the judgment so rendered in the said circuit court to the Supreme Court of Pennsylvania, and the judgment of said circuit court affirmed in said Supreme Court, prout the records, in the said circuit and Supreme Court, hereunto annexed, prout the same, and also the habere facias possessionem issued thereon, prout the same, and also proved that the defendant was the sole heir at law of the lessors of the plaintiffs in that ejectment. The defendant also gave in testimony the will of James Mercer, dated the second of November, 1803, prout the same, and afterwards the plaintiff gave in testimony the renunciation of Joseph Lefevre, dated the 6th December, 1804, prout the same, the renunciation of John Messencope, dated the 8th December, 1804, prout the same, and the certificate of the letters testamentary granted to John Mercer and Francis Bailey, prout the same, and also the testimony of Joseph Lefevre, prout the judge's notes; the defendant also stated three specific propositions to the honorable court, prout the same, hereunto annexed, and to be taken as part of this bill of exceptions, and prayed the honorable court to give the said propositions in charge to the jury, in support of the defendant's defence: whereupon, the honorable court gave the following charge to the jury, prout the same, hereunto annexed, which is to be taken as part of this bill of exceptions, and to which opinion the defendant did then and there except. The defendant, after the said charge was given to the jury, proposed to deliver to the jury the first volume of Binney's Reports, containing the decision of the Supreme Court, delivered in favor of the plaintiff on the record so as aforesaid removed to the said Supreme Court, on which one of the questions arising in this cause

on the acknowledgment of the said deed of James Mercer and Margaret his wife, to Nathan Thompson, had been decided by the said Supreme Court, prout the decision contained in the first volume of Binney's reports, page 470 to page 480, prout the said report of the decision which was objected to, and overruled by the court, and not allowed to be delivered to the jury; to which said several opinions of the honorable court on all the said matters the defendant did then and there except, and pray the honorable court to allow this, his exception, and affix their seal to this, his bill; which was done accordingly.

WALTER FRANKLIN. [L. S.]

Endorsed on the foregoing bill of exceptions:

54. January term, 1818.

JOHN MERCER and MARGARET MERCER, *vs.* SAMUEL WATSON. } Bill of exceptions filed, Oct. 8th, 1818.

Copy of the reasons for a new trial.

JOHN MERCER and MARGARET MERCER, *vs.* SAMUEL WATSON. } To the common pleas of Lancaster county. Motion for a new trial.

1st. Because the verdict is contrary both to the evidence and the law.

Samuel Watson, being duly sworn according to law, saith that the matters stated for the above motion are true, as he verily believes, and further saith not.

SAMUEL P. WATSON.

Sworn in open court, October 8, 1818.
Teste: WM. A. RIGG,
for G. B. PORTER, *Proth'y.*

Endorsed on the foregoing reasons:

54. January term, 1818.

MERCER, *vs.* WATSON. } Reasons for a new trial filed October 8th, 1818.

Copy of the recognizance in Supreme Court.

DAVID WATSON, SARAH WATSON, ESTHER WATSON, MARIA WATSON, ANN WATSON, SAMUEL P. WATSON, and JANE WATSON, heirs at law of SAMUEL WATSON, deceased, by their guardian JOHN COOPER, appointed by the court guardian ad litem, pltffs. in error,
vs.
JOHN MERCER and MARGARET MERCER.

In the Lancaster district of the Supreme Court of May term, 1819, No. 31.

We acknowledge to owe, and be indebted to the said John Mercer in the sum of five hundred dollars lawful money of the United States, of our goods and chattels, lands and tenements, jointly and severally, to be made and levied to the use of the said John Mercer and Margaret Mercer, their

executors, administrators, and assigns, if default be made in the following condition; whereas, the said heirs at law of the said Samuel Watson, decd., by their guardian John Cooper, have prosecuted a writ of error from the Lancaster district of the Supreme Court to the court of common pleas of Lancaster county, directed on a judgment obtained against the said Samuel Watson, deceased, at the suit of the said John Mercer and Margaret Mercer.

Now, the condition of this recognizance is such, that if the said heirs at law, by their guardian John Cooper, shall prosecute the said writ of error with effect, and in case the said judgment shall be affirmed, shall pay the plaintiffs below their damages and costs, in the former judgment affirmed, and also pay to them their damages and costs to be awarded for delay of execution, then this recognizance to be void; otherwise of force.

JOHN COOPER.
WM. McCAUSLAND.

Taken and acknowledged the twenty-sixth day of April, 1819, before
WALTER FRANKLIN.

Copy of the writ of error.

PENNSLYVANIA, *sc.*

[SEAL.] The Commonwealth of Pennsylvania to the judges of the court of common pleas for the county of Lancaster, greeting:

Because, in the record and process, and in rendering the judgment in a certain plaint which was in our said court, before the judges of the same court, by our writ between John Mercer and Margaret Mercer, plaintiffs, and Samuel Watson, defendant, which said Samuel Watson having died intestate, leaving David Watson, Sarah Watson, Esther Watson, Maria Watson, Ann Watson, Samuel P. Watson, and Jane Watson, his heirs at law, for whom the court have appointed John Cooper, guardian as it is said, manifest error hath intervened to the great damage of the said David Watson, Sarah Watson, Esther Watson, Maria Watson, Ann Watson, Samuel P. Watson, and Jane Watson, as by the complaint of the same David Watson, Sarah Watson, Esther Watson, Maria Watson, Ann Watson, Samuel P. Watson, and Jane Watson, minor children of the said Samuel Watson, deceased, who died intestate, complaining by their guardian, John Cooper aforesaid, we have received information. We, willing that, if any error be therein, it should be corrected, and that speedy justice be done to the parties in this part, do command you that if judgment, as it is said, be rendered in the said plea, then the record and process, and all things touching the same, under your seal, distinctly and openly, you have before the judges of our Supreme Court, at a Supreme Court to be held at Lancaster, in and for the Lancaster district of said Commonwealth, on the third Monday of May next, and this writ, that the record and process aforesaid, being inspected, we may further cause to be done what of right, and according to our laws and customs, ought. Witness, the honorable William Tilghman, esquire, Chief Justice of our Supreme Court, at Lancaster, the thirteenth day of May, in the year of our Lord one thousand eight hundred and eighteen, and of the Commonwealth the forty-second.

HENRY EICHOLTZ,
Prothonotary of the Lancaster District.

Allowed by THOS. DUNCAN.

Endorsed on the foregoing writ of error:

31. May term, 1819.

DAVID WATSON, SARAH WATSON, ESTHER WATSON, MARIA WATSON, ANN WATSON, SAMUEL P. WATSON, and JANE WATSON, heirs at law of SAMUEL WATSON, deceased, who died intestate and for whom the court have appointed JOHN COOPER guardian, pl'tffs in error,

vs.

JOHN MERCER and MARGARET MERCER, defendants in error.

Writ of error to the court of common pleas of Lancaster county:

Received in the court of common pleas of Lancaster county, April 26th, 1819.

Record filed in the Supreme Court, May 15th, 1819.

J. HOPKINS, *Atty. for Pltff.*

Writ $2 paid.

To the honorable the judges of the Supreme Court of the Commonwealth of Pennsylvania: The record of the within stated suit, together with all things touching the same, so full and entire as they remain in our court, we hereby return, as we are within commanded.

WALTER FRANKLIN.

April 26th, 1819.

Copy of the decree of the Supreme Court.

In the Supreme Court of the Commonwealth of Pennsylvania, for the Lancaster district, of May term, 1819, No. 31.

DAVID WATSON, SARAH WATSON, ESTHER WATSON, MARIA WATSON, ANN WATSON, SAMUEL P. WATSON, and JANE WATSON, heirs at law of SAMUEL WATSON, deceased, who died intestate, and for whom the court have appointed JOHN COOPER, guardian, pl'tffs in error,

vs.

JOHN MERCER and MARGARET MERCER, defendants in error.

Writ of error to the court of common pleas of Lancaster county:

[SEAL.] And now, June 3d, 1820, at a Supreme Court held at Lancaster, for the Lancaster district, before the honorable John B Gibson and Thomas Duncan, esquires, justices of said court on argument, the court reverse the judgment of the court of common pleas in this action.

Attest: HENRY EICHOLTZ, *Prothy.*

Endorsed on the foregoing decree:

31. May term, 1819.

DAVID WATSON, SARAH WATSON, ESTHER WATSON, MARIA WATSON, ANN WATSON, SAMUEL P. WATSON, and JANE WATSON, heirs at law of SAMUEL WATSON, deceased, who died intestate, and for whom the court have appointed JOHN COOPER, guardian, pl'tffs in error,

vs.

JOHN MERCER, and MARGARET MERCER, defendants in error.

Decree of the Supreme Court filed, Dec. 6th, 1826. 6th Dec., 1826, from David Watson, junr., seven dollars, seventy-five cents costs.

D. MOORE, *Prothy.*

Prothy. & crier - - - - - - - -	$3 75
Atty. - - - - - - - - -	4 00
	$7 75

STATE OF PENNSYLVANIA, *Lancaster County, ss.*

[SEAL.] I, Christian Bachman, prothonotary of the court of common pleas for said county, do certify that the foregoing contains a full and correct copy of the whole record of the suit therein stated wherein John Mercer and Margaret Mercer are plaintiffs, and Samuel Watson was originally defendant, with all the proceedings therein had.

In testimony whereof, I have hereunto set my hand and the seal of said court, at Lancaster, this eleventh day of May, in the year of our Lord one thousand eight hundred and thirty-three.

CHRISTN. BACHMAN, *Prothy.*

In the court of common pleas of Lancaster county, in the Commonwealth of Pennsylvania, of the term of January, in the year of our Lord one thousand eight hundred and eighteen, among other things, it is thus contained:

Rogers. JOHN MERCER and MARGARET MERCER, *vs.* SAMUEL WATSON. 55 Hopkins. Precipe filed. } Sums in ejectment, issued December 2d, 1817. 13 miles served by copy. April 27th, 1818, defendant pleads not guilty. Issue and rule for trial.

April 26th, 1819, on motion of Mr. Hopkins, the court appoint John Cooper, of Leacock township, guardian ad litem in this suit, the defendant being now dead.

March 12th, 1821, plaintiffs suffer a non-suit.

Ut. due, April 12th, 1819, def'd'ts death suggested.

Prot. Passmore - - - - - - - -	$2 37
Prot. Porter - - - - - - - - -	4 25

Copy of the precipe and statement.

JOHN MERCER and MARGARET MERCER, *vs* SAMUEL WATSON.

Issue summons in ejectment, that Samuel Watson appear before the judges of the court of common pleas in and for the county of Lancaster, to be holden at Lancaster on the day of next then, and there to answer to a certain complaint made by John Mercer and Margaret Mercer, that he, the said Samuel Mercer hath now in his actual possession a tract of land situate in Strasburg township, in said county, beginning at a post, being the corner of the above described tract of land; thence by the same, west one hundred and twenty-four perches, to a post; thence by the same, north one hundred and ten perches, to a post; thence by the same,

west five perches, to a post; thence by the same, north thirty-five and a half perches, to Pequea creek; thence down the said creek, on the north side thereof, by the several courses thereof one hundred and forty-eight perches, to a post; thence by land of David Watson in right of his wife, south seven degrees, east one hundred and thirteen perches, to a post; thence by the same, south eighty-six degrees west, forty perches, to a post; thence by land of Matthew McClung, and Jacob Beck, south south-east eighty-seven perches, to a post; thence by the same, east two hundred and seventeen perches, to a white oak; and thence north, thirty-eight perches, to the place of beginning, containing one hundred and sixty acres, they being part of a large tract of two hundred and ten, acres and allowance, &c., the right of possession or title to which they, the said John Mercer and Margaret Mercer, say is in them, and not in the said Samuel Watson; all which they are prepared to prove before the said court, &c.

MOTLON C. ROGERS, *Att. for Pl'ffs.*

JOHN PASSMORE, Esquire.

Endorsed on the foregoing precipe and statement:

55. January term, 1818.
JOHN MERCER and MARGARET MERCER,
vs.
SAMUEL WATSON.
Precipe and statement filed, Nov. 29th, 1817.

Copy of the writ of ejectment.

Lancaster county, ss.

[SEAL.] The Commonwealth of Pennsylvania to the sheriff of Lancaster county, greeting: You are hereby commanded that you summon Samuel Watson to be and appear before the judges of the court of common pleas in and for said county, to be holden at Lancaster, on the third Monday in January next, then and there to answer to a certain complaint made by John Mercer and Margaret Mercer, that he, the said Samuel Watson, now hath in his actual possession a tract of land situate in Strasburg township, Lancaster county, beginning at a post, being the corner of lands now in the possession of said Samuel Watson; thence by the same, west one hundred and twenty-four perches, to a post; thence by the same, north one hundred and ten perches, to a post; thence by the same, west five perches, to a post; thence by the same, north thirty-five and a half perches, to Pequea creek; thence down the said creek, on the north side thereof, by the several courses thereof, one hundred and forty-eight perches, to a post; thence by land of David Watson, in right of his wife, south seven degrees, east one hundred and thirteen perches, to a post; thence by the same, south eighty-six degrees, west forty perches, to a post; thence by lands of Mathew M'Clung and Jacob Beck, south south-east eighty-seven perches, to a post; thence by the same east two hundred and seventeen perches, to a white oak; and thence north thirty-eight perches, to the place of beginning—containing one hundred and sixty acres, being part of a large tract of two hundred and ten acres, &c. the rights of possession or title to which they, the said John Mercer and Margaret Mercer, *saith* is in them, and not in the said Samuel Watson. All which they, the said John Mercer and Margaret Mercer, avereth they are ready to prove before our said court. Hereof fail not.

Witness, the honorable Walter Franklin, esquire, president of our said court, at Lancaster, the twenty-ninth day of November, in the year of our Lord one thousand eight hundred and seventeen.

JOHN PASSMORE, *Prot.*

Endorsed on the foregoing writ of ejectment:

55. January term, 1818,

JOHN MERCER and MARGARET MERCER,
vs.
SAMUEL WATSON.

Sums. in ejectment, 13 miles, served by copy: So answers Rogers.

GEORGE HAMBRIGHT, *Shff.*

STATE OF PENNSYLVANIA, *Lancaster county, ss.*

[SEAL.] I, Christian Bachman, prothonotary of the court of common pleas for said county, do certify that the within and foregoing contains a full and correct copy of the whole record of the suit therein stated.

In testimony whereof, I have hereunto set my hand, and the seal of said court, at Lancaster, this eleventh day of May, in the year of our Lord one thousand eight hundred and thirty-three.

CHRIST. BACHMAN, *Proth.*

In the district court for the city and county of Lancaster, of June term, 1829, No. 30.

Copy of docket entry.

Buchanan. Ellmaker. Rogers. JOHN MERCER, surviving executor of JAMES MERCER, deceased,
vs.
Hopkins. *a. b. c.* JANE WATSON, and DAVID WATSON, also ESTHER WATSON, MARIA WATSON, ANNE MARGARET WATSON, SAMUEL PATTERSON WATSON, JANE JEMIMA WATSON, who are minors, by their guardian, the said JANE WATSON.

Sums. in ejectment issued May 6th, 1829, 12 m served by copies, May 11th, 1829; removed by certiorari to the circuit court to September term, 1829, No. 2.

December 24th, 1831, defendants plead not guilty, issue and rule for trial. And now, April 2d, 1833, a jury being called, came, to wit: Nicholas Hogendobler, Jacob Geitner, Anthony E. Roberts, Adam Fogle, esq., John Sheaff, Henry Ranck, William Kirkpatrick, John Wissler, George Weaver, jr., John Smith, Jeremiah Burford, and Hiram Evans, twelve good and lawful men, of the county of Lancaster, who, being duly empannelled, returned elected, by ballot, chosen, sworn, or affirmed, upon their oaths and affirmations, respectively do say that they find for the plaintiff, with six cents damages and six cents costs. April 3d, 1813, judgment nisi; April 6th, 1833, Mr. Montgomery, on reasons and affidavit filed, moves for a new trial. Same day, motion overruled, and judgment on the verdict.

Defendants' appeal to the Supreme Court.

Copy of the precipe.

JOHN MERCER, surviving executor of JAMES MERCER, deceased,
vs.
JANE WATSON, and DAVID WATSON, also, ESTHER WATSON, MARIA WATSON, ANNE MARGARET WATSON, SAMUEL PATTERSON WATSON, JANE JEMIMA WATSON, who are minors, by their guardian, the said JANE WATSON.

Issue summons in ejectment, commanding the defendants to appear before the judges of the district court, for the city and county of Lancaster, to *be* be holden at the city of Lancaster, on the 2d Monday of June next, then and there to answer to a certain complaint made by the said plaintiff, that they, the said defendants now have in their actual possession a tract of land situate in Leacock township, in the said county, containing two hundred and one acres and one half, or thereabouts, bounded by lands of the heirs of George Eckert, esq., deceased, David Woods, deceased John Cooper, deceased, Charles McClung, deceased, and lands of John Denlinger, and others; the the right of possession and title to which he, the said plaintiff, saith is in him, and not in the said defendants: all which he, the said plaintiff, avereth he is prepared to prove before our said court.

JAMES BUCHANAN,
AMOS ELLMAKER,
HENRY ROGERS,
Att'ys for Pl'ff.

N. W. SAMPLE, jr. *Prothy. D C.*
May 2, 1829.

Endorsed on the precipe:

30. June term, 1829.
MERCER, *vs.* WATSON. } Precipe filed, May 6th, 1829,

Copy of writ.

CITY AND COUNTY OF LANCASTER, *ss.*

[SEAL.] The Commonwealth of Pennsylvania to the sheriff of Lancaster county, greeting:

You are hereby commanded that you summon Jane Watson, and David Watson, also, Esther Watson, Maria Watson, Ann Margaret Watson, Samuel Patterson Watson, Jane Jemima Watson, who are minors, by their guardian the said Jane Watson, to appear before the president of the district court for the city and county of Lancaster, at a district court to be holden at Lancaster on the second Monday in June next, then and there to answer to a certain complaint made by John Mercer, surviving executor of James Mercer, deceased, that they, the said Jane Watson, and David Watson, and Esther Watson, Maria Watson, Anne Margaret Watson, Samuel Patterson Watson, and Jane Jemima Watson, now have in their actual possession a tract of land situate in Leacock townhip, in the said county,

containing two hundred and one acres and one half, rothereabouts, bounded, by lands of the heirs of George Eckert, esq., deceased, David Woods, deceased, John Cooper, deceased, Charles McClung, deceased, and lands of John Denlinger, and others; the right of possession or title to which he, the said John Mercer, surviving executor of James Mercer, deceased, saith is in him, and not in the said defendants: all which he, the said John Mercer, avereth he is prepared to prove before our said court. Hereof fail not.

Witness, the honorable E. G. Bradford, president of our said court at Lancaster, the eighteenth day of April, in the year of our Lord one thousand eight hundred and twenty-nine.

N. W. SAMPLE, Jr., *Prothy.*

Endorsed on the writ:

30. June term, 1829.

JOHN MERCER, surviving executor of JAMES MERCER, deceased,
vs.
JANE WATSON, and DAVID WATSON, also, ESTHER WATSON, MARIA WATSON, ANNE MARGARET WATSON, SAMUEL PATTERSON WATSON, JANE JEMIMA WATSON, who are minors, by their guardian the said JANE WATSON.

Sums. in ejectment. 12 miles, served by copies. So answers,
ADAM DILLER, *Shff.*

Buchanan. Ellmaker. Rogers.

Copy of certiorari.

PENNSYLVANIA, *Lancaster County, ss.*

The Commonwealth of Pennsylvania to the judges of the district court for the city and county of Lancaster, greeting:

We being willing, for certain causes, to be certified of a certain plea of ejectment, wherein John Mercer, surviving executor of James Mercer, deceased, is plaintiff, and Jane Watson, and David Watson, also, Esther Watson, Maria Watson, Anne Margaret Watson, Samuel Patterson Watson, Jane Jemima Watson, who are minors, by their guardian the said Jane Watson, before you depending, do command you that the plea aforesaid, with all things touching the same, before the justices of the circuit court, for the county of Lancaster, or one or more of them, into the office of the clerk of the circuit court at Lancaster, for said county, the first Monday in September next, so full and entire as in our court before you they remain, you certify and send, together with this writ, that we may further cause to be done thereupon, that which of right, and according to the laws of the State of Pennsylvania, ought. Witness, the honorable John B. Gibson, Chief Justice of the Supreme Court of Pennsylvania at Lancaster, the sixteenth day of March, in the year of our Lord one thousand eight hundred and twenty-nine.

N. W. SAMPLE, *jr.*,
Clerk Circuit Court.

Allowed by MOLTON C. ROGERS.

Endorsed on the certiorari:

2. September term, 1829.

JOHN MERCER, surviving executor of James Mercer, deceased,
vs.
JANE WATSON and DAVID WATSON, also, ESTHER WATSON, MARIA WATSON, ANN MARGARET WATSON, SAMUEL PATTERSON WATSON, JANE JEMIMA WATSON, who are minors, by their guardian, the said JANE WATSON.

Certiorari.

Buchanan. Ellmaker. Rogers.

The plea within mentioned, with all things touching the same, so full and entire as before us they remain in a certain schedule to this writ annexed, before the justices of the Supreme Court of Pennsylvania, or one or more of them, at the day and place within mentioned, we certify and send, as within we are commanded.

So answers,

E. G. BRADFORD,
A. L. HAYES,
Judges of the district court for the city and county of Lancaster.

Copy of rule and plea.

JOHN MERCER, surviving executor of JAMES MERCER, deceased,
vs.
JANE WATSON and DAVID WATSON, also, ESTHER WATSON, MARIA WATSON, ANN MARGARET WATSON, SAMUEL PATTERSON WATSON, JANE JEMIMA WATSON, who are minors, by their their guardian, the said JANE WATSON.

In the district court of the city and county of Lancaster, of June term, 1829, No. 30. Removed into the circuit court of the county of Lancaster, to September term, 1829.

Sept. 7th, 1829; rule on plaintiff to file a specification and description according to the act of Assembly; and when the said specification and description is filed, the defendants plead that another action of ejectment brought by the said plaintiff against the said defendants, for the same land and tenemants, to June term, 1826, No. 24, in the district court of the city and county of Lancaster, is still pending and undetermined; and this the defendants are ready to verify.

JAMES HOPKINS, *Pro def'd'ts.*

Endorsed on the foregoing:

Filed September 7th, 1829.

JOHN MERCER, surviving executor of JAMES MERCER,
vs.
JANE WATSON, DAVID WATSON, and ESTHER WATSON, ANN WATSON, SAMUEL PATTERSON WATSON, and JANE JEMIMA WATSON, by their guardian the said JANE WATSON.

Copy of the judges' notes of trial.

ROGERS opens:

Ejectment.—1785, Samuel Patterson died intestate, leaving Joseph, who died intestate, heirs Sarah and Margaret—intermarried with Mercer. Conveyed to her husband James Mercer.

19th October, 1743.—Patent J. T & R. Penn to Samuel Patterson for premises in dispute. Consideration £32 11 0.

AMOS SLAYMAKER:

I know Samuel Patterson's family—5 children, three boys and two girls—John, Joseph and Samuel, Margaret and Sarah; John and Joseph and Samuel died without heirs—Margaret married James Mercer, Sarah married David Watson—Margaret died before her husband—don't know how long—thinks Margaret was married first—don't know when—Francis Bailey, ex'or of James Mercer, died a good many years ago—Margaret was older than Sarah—she had no issue—Joseph Lefever is dead—was an ex'or of James Mercer—John Messencope, another, also dead.

August term, 1784, *No.* 29.

Proceedings in partition—Joseph Patterson vs. James Mercer and Margaret his wife, and David Watson and Sarah his wife. Judgment assigning 160 acres to plaintiff, and 41½ acres to James Mercer in right of his wife.

May term, 1784, *No.* 499.

Original writ—Summons in partition.

30*th May*, 1785. Deed.—James Mercer and Margaret his wife to Nathan Thompson, for 41½ acres, and the undivided moiety of 160 acres.

Same date —Nathan Thompson to James Mercer. Consideration £1,000, the same property re-conveyed.

2*d November*, 1833. Will of James Mercer—proved 6th and 10th December, 1804.

AMOS SLAYMAKER:

I believe Joseph Patterson died before 1785.

3*d April*, 1826. Act of confirmation of deeds of femes covert.

John and Margaret Mercer vs. Watson, June t. 1826, No. 24. Verdict for plaintiff—Judgment.

Defendants' call for cross-examination.

AMOS SLAYMAKER:

Margaret was older than Sarah—an impression on my mind was that John was the oldest I think they all came of age—can't tell if John died first. Never heard that he made a will or that any of them did—think that John died before Joseph or Samuel—can't say certainly Samuel came of age—Land lies on south side of Pequea; that creek is the line between Leacock and Strasburg; the land is bounded by George Echeis on the east, John Cooper over the creek, and Woods and Cooper, both on the north side of the creek: John Denlinger joins it—it lies in Strasburg township. There are some lots on the south; part of them are on the land that belonged to

Patterson. These lots were laid out in Mercer's time. Can't tell who is in possession of them—there are people living on them.

Plaintiff closes.
Montgomery opens defence.

Judge LIGHTNER:

I know none of the Pattersons, but Mrs. Watson and Mrs. Mercer—Mrs. Watson left one son, Samuel Patterson Watson; he is dead: my impression is, she died before her husband—the son left several children, the defendants. I knew the land in dispute; part of it is laid off in lots on the south side by Samuel P. Watson I think five sold of this part—think half acre lots. Robert Kain lives on one, and owns it; Edward Graham lives on another as tenant to the heirs of S. P. Watson; another occupied by Jane Harris, and owned by Martin Bitzer; one other without any improvement, but fence, owned by the heirs of William A. Slaymaker: one more in the same way, owned by Martin Bitzer—laid out about 1811. Lots sold by public sale; purchasers bound to keep up fence between him and them—think he died about 1815—can't say—all the land lies in Strasburg township; creek the line between that and Leacock; no part of land in Leacock.

THOMAS CRAWFORD:

I surveyed 15th Nov. 1811, and laid off a number of lots, number or quantity not recollected—public sale made of the lots at the house of John Smoker, deceased. I drew three conveyances to Martin Bitzer—two lots; Daniel McFadden one; John G. Moch one; some of the lots afterwards were built on—Mrs. Watson was dead long before—land belonged to tract claimed by James Mercer.

Administration on the estate of Samuel P. Watson granted 26th March, 1819.

1st February, 1812.—Deed from Samuel P. Watson and wife to Martin Bitzer; cons'r. $262 for two lots—one, one acre, and the other an acre and a half, neat measure.

Same date.—Deed from same to Daniel McFadden; cons'r. $240 for one lot, 110 perches.

Same date.—Same to John G. Moch; cons'r. $171 for one acre—all acknowledged same day, and recorded on 1st May, 1813.

29th March, 1812.—Martin Bitzer and wife to John G. Moch; cons'r. $181; one of the lots containing half an acre—part of the lot of 1½ acres, acknowledged same day, and recorded on 1st May, 1813.

17th August, 1813—Daniel McFadden and wife to Martin Bitzer; cons'r. $240 for the lot of 110 perches; recorded 11th June, 1827.

29th March, 1812—Martin Bitzer and wife to Thomas Harris; cons'r. $223 for lot of one acre; same day acknowledged; recorded 28th April, 1813.

1st April, 1814—Thomas Harris and wife to John Lightner; the one acre lot, *inter alia;* cons'r $1,400 for the whole.

Same day.—John Lightner and wife to John G. Moch; cons'r. $1,550, same property; recorded 4th April, 1814.

28th August, 1816.—John G. Moch and wife to Samuel P. Watson, lot of one acre; cons'r. $400.

3d April, 1816.—John G. Moch and wife to Robert Kean, for the lots conveyed to him by Martin Betzer on the 29th March, 1812; acknowledged same day; recorded 20th April, 1816.

6th December, 1811.—Conditions of sale of the above lots—original sale.

Judge LIGHTNER:

All the eight were sold off this land, but they are now included in five.

February t. 1802.—*Issued 4th Feb.* 1802, *No.* 77.

Lessee of David Watson and wife vs. Foulclaim, with notice to James Mercer,—removed to Circuit Court to March term, 1802, No. 2,—abated by death of James Mercer in 1804,—demise laid on 1st Feb. 1802,—ouster on same day.

February t. 1805, *No.* 69.—*Issued 4th Feb.*, 1805.

Lessee of David Watson and wife vs. Francis Bailey, John Mercer, John Messencope, and Joseph Lefever,—ejectment for same property,—Demise laid 7th December, 1804,—ouster same day,—removed to Circuit Court to March t. 1805, No. 4,—tried 13th May, 1807,—verdicts for plaintiff—same day motion for new trial for reasons filed—overruled and appeal to Supreme Court,—argued 22d December, 1808, C. A. V.—December 31st, 1808, judgment affirmed.

June term, 1818, No. 54.—John Mercer and Margaret Mercer vs. Samuel P. Watson,—ejectment for the land in dispute; October 7th, 1818, verdict for plaintiff,—Motion for a new trial withdrawn,—judgment,—writ of error to May t. 1819,—judgment reversed.

Same term, No. 55.—Record of another ejectment for same property, between same parties,—12th March, 1821, non-suit.

August t. 1809, No. 1.—Lessee of David Watson and wife vs. Bailey and others,—trespass for mesne profits,—verdict 2d March, 1813, for plaintiff's, for $1,200.

March t. 1809, No. 2.—Habere facias on the judgment affirmed on the writ of 1805—Fi. fa.—return, possession delivered, and costs paid.

12th December, 1805.—Will of David Watson proved 31st Dec. 1805.

Defendants' close.

Plaintiffs moved to amend by inserting Strasburg in lieu of Leacock—amendment overruled, and exception taken.

Plaintiffs' rebutting evidence.

June t. 1829, No. 30.—The present suit brought,—precipe May 6th, 1829.

Charge of the Court.

Samuel Patterson owned the land in 1785:—when he died he left three sons and two daughters; the sons died without children; so that the whole estate came to the two daughters—Sarah married David Watson, and Margaret married James Mercer. In 1785, Margaret Mercer, intending to give her land to her husband, joined with him in a conveyance to Nathan Thompson, who conveyed back to James Mercer. James and Margaret his wife had no children, and on her death, if the estate had continued to belong to

her, it would have gone to the defendants, who are the children of her sister Sarah, and are her heirs at law. The defendants, therefore, contend that the conveyance to Nathan Thompson was void for a defect in the certificate of acknowledgment. That has been decided against the defendant by the Supreme Court, and this court and you are bound by the decision. It has been determined by the Supreme Court that the act of Assembly of 1826 cured the original defect. This can be overruled only by the Supreme Court of the United States: they can succeed, therefore, only by some other title.

They claim a title by the statute of limitations. They claim to have been in the adverse possession of the premises from the death of James Mercer in 1804, on the ground that the possession of the plaintiffs' as ex'ors. was their possession. If the deed from Mercer and wife to Thompson, and his conveyance to Mercer, the husband, was good, and passed the estate to James Mercer, (and the defdts. stand in no need of the statute of limitations if they did not) this is strange doctrine. But even if these deeds were a nullity, yet the possession of the ex'ors of James Mercer, after the expiration of his estate, and the expiration of the estate of his wife, would not be under the defendants, but adverse to them. The possession of the ex'ors contained no recognition of the defdt's title, but was inconsistent with it.

But it is said the statute never intended to validate the deed after the statute had run. The statute, however, could not run if the possession of the ex'ors, after the death of James Mercer, were not the possession of the defd'ts. It seems to me that the possession of the ex'ors. was adverse, because they denied the title of Sarah Watson or her children. They held the land in trust for the uses declared in the will; that is to sell and to divide the price among James Mercer's devisees. This a fact for you.

But the intent of the statute was to make the conveyance good by relation from its date. It could be good in no other way: for if it were, the estate would vest for the first time in 1826, when the confirming law was passed.

The statute of limitations, therefore, will not avail the defendants. The former proceedings in the cause have been relied on as giving the defd'ts a title; that is, the verdict obtained by them; a non-suit suffered by the plaintiff's, and the several descents that have taken place of the property. I see nothing in all these to stand in the way of the plaintiff's right.

I dissent from all Mr. Hopkins' points, and cannot instruct you according to his request. The lots sold by Watson are not involved in this suit. Not necessary to exclude them from the verdict.

Copy of defendants' points.

JOHN MERCER, *vs.* JANE WATSON and others. } In the Circuit Court of the county of Lancaster. Ejectment.

The honorable court are respectfully requested to instruct the jury upon the following points in the charge delivered to them; and to file their charge of record in this cause, with a copy of the evidence given in the same, to be copied at the cost of the defd'ts for that purpose.

1st. To instruct the jury that, on the death of Margaret Mercer, the wife of James Mercer, seized in fee of the lands in dispute in this cause, intestate, her husband continuing to hold and possess them after her death, and

claiming to devise them as his own, was a tenant at sufferance, and his continuing in possession of them was not adverse or hostile to the true owners, or the heirs at law of his wife.

2. To instruct the jury that, upon the death of Margaret Mercer, intestate and without issue, and the ejectment sued on the 4th day of Feb. 1802, by her sister, Sarah Watson, her sole heir at law, and David Watson, her husband, against James Mercer, for the recovery of the real estate of which the said Margaret Mercer died seized in fee, and which the said James held and withheld from her heir at law, the said Sarah, the said James Mercer became a tort feasor and trespasser from the time he withheld the said fee simple estate from the said Sarah and her husband, and became responsible *for* them for damages for so withholding the said estate from the said David Watson and his wife, in the right of the said Sarah, from the death of the said Margaret, and the descent cast, unless the plaintiff can show other title for so withholding and retaining the said possession than that of the deeds of the 30th of May, 1785, by James Mercer and Margaret his wife, to N. Thompson, and from said Thompson to the said James Mercer given in evidence in this cause.

3. To instruct the jury that the alleged deed of the 30th of May, 1785, executed by James Mercer and Margaret his wife, to Nathan Thompson, not being executed and acknowledged conformably to the act of Assembly, passed 24th of Feb., 1770, "establishing a mode by which husband and wife may hereafter convey the estate of the wife," was, at the time of its execution and acknowledgment, no deed in law, but an absolute nullity, so far as it pretended to convey, or in any way affect, the real estate of the said Margaret contained in it.

4. To instruct the jury that as John Mercer, the present plaintiff, and the other defendants in the ejectment sued against them on the 4th of Feb. 1805, in the common pleas of Lancaster county, for recovery of the lands now in dispute in this ejectment, by David Watson and Sarah his wife, gave in evidence the deed of the 30th of May, 1785, given in evidence in this cause; and insisted on it, on the trial and appeal taken in that cause, to be a bar to the said ejectment, by vesting the estate in Nathan Thompson, which his conveyance, given in evidence, vested in the said James Mercer, and tolled and defeated the descent of the said estate of Sarah Watson: on which points, so raised and filed of record by the defd'ts., the Supreme Court, on the 31st December, 1808, decided that the said deeds did not bar the said ejectment, and that the plaintiffs, as heirs at law, do recover the real estate of the said Margaret from the said defendants;—which judgment, given in evidence in this cause, is conclusive evidence that the said deed of the 30th of May, 1785, was absolutely void, as the deed of the said Margaret Mercer, to convey her estate, or to prevent the descent thereof to her heir at law, the said Sarah.

5. To instruct the jury that, as it appears from the record given in evidence in this cause, that the lessee of David Watson, and Sarah his wife, after the recovery stated in the 4th point above, on the day of 1809, brought an action of trespass for the mesne profits against the said John Mercer (the present plaintiff) Francis Bailey, Jno. Messencope, and Joseph Lefevre, to term in the Common Pleas of Lancaster county, to term, 1809, in which he recovered by the verdict of a jury, and the judgment of the court, $1,200:—showing that their possession of the lands

so recovered, and the profits received, was wrongful, and they themselves trespassers in occupying the said land so recovered under the deed and will shown in evidence in this cause by plaintiff.

6. To instruct the jury that, as the said Sarah Watson died intestate, and her real estate, the lands now in dispute, descended to Samuel P. Watson, her only child and heir at law before the 2d of December, 1817, against whom John Mercer and Margaret Mercer brought an ejectment to January term, 1818, No. 54, in the Common Pleas of Lancaster county, for the lands now in dispute; which, being put to issue, came to trial when the plaintiffs gave in evidence the deed of the 30th May, 1785, to support the said ejectment, when the defendant requested the court to give it in charge to the jury; "that the deed of the 30th May, 1785, from "James Mercer, and Margaret his wife, to Nathan Thompson, prout said "deed, given in evidence by plaintiff to sustain his said suit, is not duly ac- "knowledged to convey the estate of inheritance of Margaret Mercer so as "to destroy the descent of the estate to the defendant, her heir at law." Whereupon, the court charged the jury that the said deed, so acknowledged, was sufficient to convey the said inheritance, and bar the descent thereof to the defendant as the heir of the said Margaret. On which charge, a verdict and judgment being rendered in favor of the plaintiff, and a writ of error prosecuted by the defendant, Samuel Watson, to the Supreme Court, to May term, 1819; and, on argument, "the said court reversed the judgment of the court of common pleas of Lancaster county in this action:" the said judgment of the Sup. Ct. being given on the very deed of the 30th of May, 1785, was conclusive evidence that the said deed was inoperative and void to convey the estate of the said Margaret Mercer, and that the descents of the estate of the said Margaret, on her death, to her sister Sarah Watson, and on her death to her son and heir at law Saml. P. Watson, were valid and legal.

7. To instruct the jury that the two judgments of the Supreme Court given in evidence in this cause, on the 31st Dec. 1808, and on the 3d of June, 1820, on the very point of the deed of the 30th May, 1785, being by each of the records specifically presented to the said court for their judgment, and that the said judgments having not only decided that the said deed was inoperative and void, to show title in the def's. in the first, or in the pltff's. in the 2d ejectment, and in no way impeded the descent under the intestate laws of the estate of Margaret Mercer's real estate to her heir at law, but that the said heir was entitled to recover thereby the said two judgments, are conclusive evidence that the said deed of the 30th May, 1785, so far as the same related to the said Margaret Mercer, was null and void, and never after could become a legal instrument after her death and the treble descent to Sarah Watson, and from her to her son Samuel Watson, and from Samuel Watson to his children, under said judgments, and the intestate laws, before the 3d of April, 1826. And if the court should not think the said judgments and descents to conclude and destroy the said deed of the 30th of May, 1785, and make it a nullity, they will please to instruct the jury specially and particularly the legal operation and effect of the said decisions and descents.

7. To instruct the jury whether, under the two judgments in the 2 ejectments, John Mercer and Margaret Mercer becoming voluntary non-suit in the ejectment to January term, 1818, No. 55, on the 12th of March, 1821, did not amount to an acquiescence in the previous judgments, and voluntary

submission to them, and an equitable and legal relinquishment of the claim to the lands now in dispute.

And whether, under the evidence given of these eject's. in 1802, and its result, and of the ejectments in which the two judgments were rendered against the deed of the 30th May, 1785, and in favor of the heir, and the three descents cast before the 3d of April, 1826, and the above non-suit when they had the power to try, would not be cause for a perpetual injunction in chancery agst. further proceedings upon the said deed.

And whether the same would not, *a fortiori*, be a bar under the statute of the 13th of April, 1807—the said records showing that the specific mode in which they were presented to the Supreme Court was a demurrer, and to all intents and purposes equivalent thereto, taken on the deed of the 30th of May, 1785, in Penna., and, if not, please to state the operation of the records and judg'ts., and non-suit, and three descents, in equity and law on this cause.

8. To instruct the jury that this cause is barred by the statute of limitations by the suit brought on the 4th Feb. 1802, by the suit brought on the 4th of Feb. 1805, and the proceedings and judgment rendered therein, and the hab. facs. possessionem and fi. fa. issued and executed thereupon. Also, by the action of trespass for the mesne profits, and the recovery thereon, prout the said records respectively given in evidence in this cause, and the peaceable possession, and quiet and undisturbed enjoyment, of the lands for which this suit is brought, until it was brought on the 6th of May, 1829, the recovery on 31st of Dec. 1808, and its execution, extinguishing the tortuous possession from the death of Margaret Mercer, and the action of trespass for the mesne profits compensating for the lawless intrusion, prout the record thereof—making the possession continuous and co-extensive with the title under the descents and adjudications given in evidence.

9. That the act of Assembly of the 3d of April, 1826, read and relied upon by plt'ff. according to its just and true construction, was designed for the protection of purchasers made bona fide and for full value only, and not to interfere in favor of volunteers, to subvert rights previously acquired by three descents, and corroborated by the strongest equities, and the highest legal decisions.

10. To instruct the jury that if the said act of the 3d of April, 1826, entitled "A supplement to an act, for the better confirmation of the estate of persons holding or claiming under feme coverts, and for establishing a mode in which husband and wife may hereafter convey their estates," so far as the same operates upon the right and title acquired by the def'ts ancestors by the decision of the Supreme Court on the 31st of Dec. 1808, in the suit then depending, and given in evidence in this cause; and, again, in their decision of the 3d June, 1820, in the suit given in evidence in this cause; and, also, by the non-suit given in evidence in another ejectment given in evidence, and also by the ejectment brought the 4th of Feb., 1802, and given in evidence in this cause; and, also, by the three descents proved and given in evidence in this cause, is, if the said act was intended to operate on such rights so validated, descended, and confirmed, unconstitutional and void.

11. To instruct the jury what is the operation of the act of the 3d of April, 1826, upon the land sold and shown by the deeds given in evidence in this cause, if the same is holden to have a retrospection in giving efficacy to the deed of the 30th of May, 1785, given in evidence.

JAMES HOPKINS,
JOHN R. MONTGOMERY, } *for Defdt's.*

Endorsed on the foregoing:

2d September term, 1829, circuit court.

MERCER *vs.* WATSON. } Defdt's points. Filed April 3d, 1833.

Copy of reasons for a new trial.

JOHN MERCER, surviving executor of JAMES MERECR, *vs.* JANE WATSON, DAVID WATSON, and others. } In the circuit court of the county of Lancaster, tried, and verdict rendered for pltff, prout verdict on the 3d of April, 1833; April 6th, 1833, motion for a new trial made by defdt. on the following grounds, to wit:

1st. The honorable court misdirected the jury on each and every of the points propounded to him, and on which he charged the jury.

2. This cause is barred by the statute of limitations.

2. This cause, under the evidence given in it, would have been perpetually enjoined any proceedings upon it by the pltff.; and the honorable judge exercising in this ejectment all the powers of chancery, through the medium of the jury ought to have charged the jury, the suit was on equitable grounds barred, and that they ought to find for the defdt.

3. This cause was barred under the act of April 1, 1807; the question propounded to the court of common pleas to charge the jury upon, and the charge upon it, and the verdict and judgment rendered upon it, being in law and equity equipolent, and the same as a demurrer, and the verdict and judgment equivalent to a special verdict, and the same as a special verdict, and the judgment of the Supreme Court in reversing the said judgment on the 3d day of June, in 1820, and awarding no venire facs. de novo.

4. The two judgments rendered by the Supreme Court on the 31st Dec. 1808, and on the 3d of June, 1820, conclusively established that the deed of the 30th of May, 1785, was no deed, but a mere nullity, which never afterwards was susceptible of confirmation by any act of the legislature.

5. The act of the 3d of April, 1826, was never intended to, nor does it in expression, operate upon this cause, and, if it did, it is unconstitutional and void.

6. That the defence given in evidence in this cause, prout the same made part of the record in this cause, makes a case which is under the conclusive protection of the constitution of the State of Pennsylvania, and of the constitution of the United States, and placed beyond the power of the State Legislature; and if the act of the 3d of April, 1826, was in intention or expression to operate on this defence (which we deny) the said act is unconstitutional and void.

7. That the verdict in this cause is illegal, and directly contrary to the evidence, in finding for the whole lands in the statement, except that contained in the parts sold when they showed title to part only, and in not finding and specifying the quantity the plaintiff showed he had title to (suppos-

ing, the not admitting for the sake of raising the objection) by the evidence he gave.

JAMES HOPKINS,
JOHN R. MONTGOMERY, } *for Defdt's.*

I respectfully request on my part, and on the part of the other defdt's, an appeal to be entered to the Supreme Court.

DAVID WATSON.

April 6th, 1833.

I, David Watson, one of the defdt's within named, being dissatisfied with the judgment of the circuit court of Lancaster, and their decision in overruling the motion this day made in my behalf, and that of the other defdt's for a new trial, hereby appeal for myself and the other defendants, from the said judgment and decision of the said circuit court to the Supreme Court of the Commonwealth of Pennsylvania for the Lancaster district, and hereby assign, as the reasons for this appeal, the same offered to the circuit court upon the motion for a new trial

DAVID WATSON.

We, the counsel for the appellants, state that the reasons for taking the said appeal are those hereunto annexed, and we do certify that we believe that the same are sufficient in law to obtain a decision in favor of our client, and are not made for the purpose of delay.

JAMES HOPKINS,
JOHN R. MONTGOMERY, } *Defdt's.*

Copy of Supreme Court docket entries.

Ellmaker. Rogers. JOHN MERCER, surviving executor of JAMES MERCER, deceased,

vs.

Hopkins. Montgomery. JANE WATSON and DAVID WATSON, also ESTHER WATSON, MARIA WATSON, ANNE MARGARET WATSON, SAMUEL PATTERSON WATSON, JANE JEMIMA WATSON, who are minors, by their guardian, the said JANE WATSON.

Appeal by defendants from the circuit court of Lancaster county.
Entered here May 11th, 1833; same day record filed.
May 25th, 1833, argued C. A. V.
June 3d, 1833, judgment affirmed.

Fee due - - - - - - -	$1 50
Tax due - - - - - - -	3 50
Proth's - - - - - - -	3 27
At.'s - - - - - - -	3 00
Due	$11,27
Copying first record remitted to Sup. Ct. U. S. - -	16 00
Copying the present record - - - - -	19 87
Due	$35 87

COMMONWEALTH OF PENNSYLVANIA, *Lancaster District, ss.*

I, John K. Findlay, prothonotary of the Supreme Court of the Commonwealth of Pennsylvania, in and for the Lancaster district, do hereby certify that the writings annexed to this certificate are true copies of the record and all proceedings had in the cause in the annexed writ of error mentioned, now on file, and remaining of record in my office.

In testimony whereof, I have set my hand, and caused the seal of the said court to be hereunto affixed, in pursuance of the direction of the said writ of error, at the city of Lancaster, in the Lancaster district of the Commonwealth of Pennsylvania, this twenty-eighth day of September, A. D. 1833, and of the independence of the United States the fifty-eighth.

J. K. FINDLAY,

Prothonotary of the Lancaster district of the Supreme Court.

MERCER *vs.* WATSON, } Opinion of the court, delivered by justice Kennedy.

LANCASTER, *June 3d*, 1833.

The counsel for the appellants in this case, upon their argument of it, considered all the reasons assigned for taking the appeal as presenting three questions.

First Whether the act of the general assembly of this Commonwealth, passed the 3d of April, 1826, entitled "a supplement to an act entitled an act for the better confirmation of the estates of persons holding or claiming under feme coverts, and for establishing a mode in which husband and wife may hereafter convey their estates," was intended to be applied to such a case as the present; and, if it were, whether in this application it is not unconstitutional and void?

Second. Whether the plaintiff's claim is not barred by the act of limitations?

And third. Whether the plaintiff's claim is not barred by the fourth section of the act of general assembly, passed the 13th of April, 1807, entitled "a supplement to an act to regulate arbitrations and proceedings in courts of justice," passed the 21st of March, 1806, which declares that "where two verdicts shall in any writ of ejectment between the same parties be given in succession for the plaintiff or defendant, and judgment be rendered thereon, no new ejectment shall be brought; but when there may be verdict against verdict between the same parties, and judgment thereon, a third ejectment in such case and verdict and judgment thereon, shall be final and conclusive and bar the right, and the plea in ejectment shall be not guilty."

As the first question was decided by this court, at an adjourned session, held here in November last, against the appellants, in another action of ejectment between these parties, for the same land upon the same title, after a very full and elaborate argument by the same counsel that appear in this case for the appellants, it was therefore thought unnecessary to argue it again. The decision of the circuit court upon it was against the appellants, and in conformity to the decision of this court in the other case just referred to. By that decision, and others made previously, this question is considered as settled by this court against the appellants.

I will now proceed to consider the next question in regard to the statute of limitations being a bar to the plaintiff's action. By the second section of

the act of the general assembly of this Commonwealth, passed the 26th of March, 1785, it is enacted that, "from henceforth no person, or persons whatsoever, shall make entry into any manors, lands, tenements, or hereditaments, after the expiration of twenty-one years next after his, her, or their right or title to the same first descended or accrued; nor shall any person, or persons whatsoever, have or maintain any writ of right or any other real or possessory writ or action, for any manors, lands, tenements, or hereditaments of the seisin or possession of him, her, or themselves, his, her, or their ancestors or predecessors, than within twenty-one years next before such writ, action, or suit so hereafter to be sued, commenced, or brought." Now it is certainly true that, according to the judicial construction put upon this act, the possession of land in this State by a person for the space of twenty-one years, may give him such a right to the possession of it as will not only enable him to defend and protect his possession in an action of ejectment brought against him; but in case of his being ejected by force, or even under a judgment had against him in an action of ejectment, will entitle him to support and maintain an ejectment for the recovery of his possession of the land again. Pedrick *vs.* Pearle, 5, S. & R. 240. But the owner of the land can also be barred by such possession where it has been *actual, continued, visible, notorious, distinct,* and *hostile,* or adverse for the space of twenty-one years. Hawk *vs.* Senseman, 6, S. & R. 21. And it is not necessary that the party claiming a right under such possession should have entered upon the land under a title, or even color of title: it will be sufficient, although he were a mere trespasser. Actual possession is one of the constituent parts of a perfect title to land, and may exist independent of the right in one, who has neither the right of possession nor the right of property, and therefore may be transferred by him who has it to another who takes it after him, and continues it, so that if the possession of the two added together will amount to twenty-one years, it will be a bar against the owner, if it has been adverse to him. Overfield *vs.* Christie, 7, S. & R. 177. Miller *vs.* Shaw, ibid 129. Lenox *vs.* Farley, 8, S. & R. 392. Royer *vs.* Benlow, 10, S. & R. 303. Manshower *vs.* Patton, ibid 334. Neither is it necessary that the party should have his residence on the land to make the possession of it adverse and complete under the statute, enclosing and cultivating it may be sufficient. Johnson *vs.* Irwin, 3, S. & R. 291.

Now let us inquire and see when the appellants first took or got the actual possession of the land in dispute. They claim title to it as the heirs at law of Margaret Mercer, who was the wife of James Mercer, under whom the plaintiff claims. At the time Margaret Mercer died, which was about the beginning of the year 1802, James Mercer the husband, was in the actual possession of the land, and claimed it under a deed, dated 30th day of May, 1785, conveying the land in fee to him from Nathan Thompson, to whom James Mercer and Margaret his wife, by their deed bearing the same date, had conveyed it in fee. This last deed was acknowledged by James Mercer nd his wife, before a proper officer, but on account of the certificate given by him of the acknowledgment having been made before him, which he endorsed upon the deed, being defective, it was adjudged afterwards, on the 31st of December, 1808, by this court, in an action of ejectment brought by the appellants against the plaintiff, who claimed under the will of James Mercer, that it was insufficient to pass the estate of Margaret Mercer, the wife, in whose right the land was held until this conveyance was made by them to Thompson. The appellants, after having obtained a judgment in

their favor, took the actual possession of the land, which was delivered to them under a writ of *habere facias possessionem*, sued out to March term, 1809. The action in which this judgment was given, upon which they obtained possession, was commenced the 4th of February, 1805, and the demise laid to have commenced on the 4th of December, 1804. Previously however to this, they had brought another action of ejectment to February term, 1802, laying their demise to have commenced on the 1st of February in that year, against James Mercer, who was then living, but died afterwards in the latter end of 1804, pending the action, by which it abated. This present action was commenced on the 6th of May, 1829.

After this statement of facts it appears to me that if a plain unsophisticated mind were asked the question: At what time did the appellants first obtain the actual possession of the land in dispute? that it would, without hesitation, say not until the spring of 1809, when it was delivered to them under the writ of *habere facias possessionem*. Statutes are generally to be understood and construed according to the ordinary meaning and common acceptation of their terms. Indeed it would be singularly strange and unreasonable were it to be held otherwise, since they are are to be regarded as rules of civil conduct, and every one at his peril is bound to know and to understand them. But it has been argued most strenuously by the counsel for the appellants, that when they were put into the actual possession of the land under their recovery in the action of ejectment, that they were by operation of law remitted in respect to their possession back at least to the 4th of December, 1804, the date of the demise upon which the recovery was had, if not to the first of February, 1802, the date of the demise in the first action of ejectment: And counting their possession as an actual one from either of these dates, to the 6th of May, 1829, when this action was commenced against them, would be a period of more than twenty-one years, and that thus they had been in the actual possession of the land, and that the plaintiff is therefore barred by the act of limitations. It seems to me that, to adopt this construction of the act in respect to what shall constitute an *actual adverse* possession, and the *time* at which it shall be considered as having *commenced*, would be disregarding entirely the rule already mentioned, by which every one may read and understand the statute, and substituting another which could not enter into the mind of one in every fifty thousand; and at the same time would be giving to the act a meaning in this respect so perfectly artificial, if not fanciful, as to be unintelligible to most minds.

But again, what would be the effect of such a construction in practice? If a person who had a claim of doubtful character to land in the possession of another, claiming under an adverse title, were to lie by until a few days before the twenty-one years had run, and then bring his action of ejectment, laying the date of the demise in the declaration (supposing the form of the action of ejectment that was in use at the time of passing the act of limitations to be still in force,) back twenty years eleven months and twenty days, the time at which his claim or title first accrued, and he should be fortunate enough to succeed on the trial of it, by obtaining a verdict and judgment, under which he is put into the actual possession of the land after the twenty-one years from the date of his demise have run, he would, according to the exposition of this act contended for by the counsel of the appellants, be protected completely, although his adversary had been in the actual and continued adverse possession of the land twenty-one years, wanting eleven or twelve days before the commencement of the action of ejectment, and more than the

twenty-one years before the trial of the cause; while the successful party in the action, on the contrary, had not been more than one day, and that too after the twenty one years from the date of his claim had run. Thus, instead of making the act a shield for him who was in the *actual* possession of the land, improving it, and by doing so adding wealth and power to the Commonwealth, as was intended, would it not be turning it completely to the advantage of him who had neither been in the *actual* or *constructive* possession; but on the contrary lying by, out of the possession, not even making an effort to obtain it, until the twenty one years had all but expired, when he commences his suit, and by a lucky and perhaps doubtful verdict and judgment, he is put into the *actual* possession of the land for the first time: then by the force of imagination his *actual* possession of the land is made to relate back to the commencement of his title. Although the principles of the common law may in some instances permit fictions to prevail, in order to prevent mischief or to afford and advance a remedy for an injury sustained by the violation of a *real* subsisting right, yet it will never be allowed to work an injury, or to *create* a right or title that has no existence. The rule is, *in fictione juris semper equitas existit.* Hence a person who has a perfectly good and available title to land, the possession of which was illegally withheld from him until he recovered it by suit, may, when thus restored to the possession, be considered by relation back as having been in during all the time he was kept out of it, so as to enable him to recover the mesne profits for that period, but he will not be permitted to invoke such *imputed* possession for the purpose of creating title or of aiding a defective one. In short, fiction is altogether inadmissible wherever it would defeat or militate against the operation of an act of the legislature.

It has also been contended that James Mercer, immediately upon the death of his wife, became, by the then existing law of the State, the tenant of the appellants. That he came within the description of a tenant at sufferance, by having obtained the possession lawfully through his marital rights, and continuing to hold it after the death of his wife, when his title or right ceased. 2 Bl Com. 149–150. Now admitting the statute of 32 Hen. 8, ch. 28, sec. 6, to be in force here, and that the alienation of James Mercer, the husband, who was seized in right of his wife, did not therefore work a discontinuance of her estate, as it would otherwise have done at common law, still it cannot be doubted for a moment but that he conceived and was firmly convinced in his own mind that, by means of the conveyance executed by him and his wife to Nathan Thompson, and the re-conveyance from Thompson to him, he became invested with a perfect indefeasable title to the land in fee simple. As corroborating evidence of this, it seems that he resisted the claim of the appellants, in consequence of which they brought an action of ejectment against him on the 4th of February, 1802. From this time the possession of James Mercer was clearly adverse and in direct opposition to the claim of the appellants. By bringing the action of ejectment against him they declared him a trespasser, as neither holding the possession under or for them; so that, after recovering in their action of ejectment, they could not have maintained an action of assumpsit for the use and occupation of the land subsequently to that time. 1 term, Rep. 378. If James Mercer had at any time admitted himself to have been the tenant of the appellants, holding possession under or for them, then his possession might with great propriety be considered in law their possession, or at least would not have been hostile or adverse to them. The intention of the le-

gislature, as manifested in the act of limitations was, that wherever a person was permitted to hold the actual possession of land, either by himself or his tenants, without recognizing or admitting right or title to it in any other, but uniformly claiming and exercising acts of ownership over it as his own, for the space of twenty-one years or upwards, that he should thereby acquire a right to it, the peaceble and quiet enjoyment of which thereafter should be made secure to him. It was designed most expressly as an act of repose. At the time this act was passed, the most of the lands within the State being wild and uncultivated, it was thought advisable to encourage the improvement of them, and among them several acts of the legislature passed with that view; I think the act of limitations may be considered as one of the number. But independent of this, the legislature doubtless intended to promote and establish the peace and quiet of society, so far as securing men in the future enjoyment and peaceable possession of lands, which they had held adversely to all the rest of the world, and been improving for a space of twenty-one years or upwards, could conduce to that end. This being the main object of the act, *constructive* and *imaginary* possessions or tenancies are not to be raised when they would have a tendency to defeat this end. On the contrary, it is the duty of courts to give such construction to the act as will most effectually carry into effect the great design of the legislature. See Thompson vs. Smith, 7, S. & R. 209–210. Under this view of this question, I am brought to the conslusion that the appellants never had any possession of the lands in dispute, which the act could operate on, until 1809, when they got it under their writ of *habere facias possessionem;* and as this action was commenced against them within twenty-one years after that, they are not protected by the act of limitations.

I now come to the third question which has been presented and argued by the counsel for the appellants, and I am inclined to think that the facts in their case do not bring them within the provision of the fourth section of the act of 1807, already recited. According to the letter of it, there must be *two verdicts* and *judgments rendered thereon* in favor of the same party, in order to form a bar against another action; but in this case the appellants never had more than one verdict in their favor, upon which a judgment was rendered by the circuit court where it was tried, and afterwards affirmed upon an appeal by the Supreme Court. In the action of ejectment commenced against them after they got possession of the land under the judgment in their favor, the verdict and judgment of the court thereon were against them instead of for them, and had this latter judgment not been reversed upon writ of error, the question which of the parties had the better right to the land might have been considered perfectly doubtful. It however has been argued that, as this reversal of the judgment against the appellants was given without awarding a *venire facias de novo*, it ought, upon an equitable construction of the act, to be deemed equivalent to a second verdict and judgment in their favor, and that such construction ought to be given to it, otherwise the mischief intended to be remedied will not be effected. After assuming that the evil existing at the passage of this act, and intended to be redressed by it was, that the parties litigating the title to land were at liberty to harrass and vex each other with as many actions of ejectment in succession as they pleased; in short, to make the strife interminable, it is contended that the legislature therefore resolved to place some reasonable limitation upon such course of proceeding, by restraining the losing party from continuing the warfare after his adversary had succeeded in two different actions, by obtain-

ing in each of them a positive judgment of a court of competent jurisdiction in his favor upon his title. And that wherever that is had in a manner which affords the party losing the same chance of success that he could have in taking the verdicts of juries and judgments of the court thereon, his case ought to be considered as embraced by the act, and coming within the plain and obvious meaning of it, although not within the letter: as, for instance, where two judgments have been rendered in favor of the same party in two successive actions upon cases stated by the parties, or on issues joined in demurrer to the pleadings, or upon demurrer to the evidence, instead of upon two general verdicts upon the same title to the same land. Now admitting this reasoning and view of the matter in support of the construction which this act ought to receive to be correct, and I think there is great force in it, still the case of the appellants falls short of those put by way of illustration. The second judgment which the appellants claim to have had in their favor, was merely a judgment of reversal pronounced by this court, which went no further than to ease or relieve them from the operation of a judgment considered erroneous on account of a question of law, whether a deed of conveyance had been executed and certified in such manner as to make it effectual for a certain purpose or not, having been decided incorrectly by the court below. It cannot be taken as a judgment of this court rendered in favor of the appellants, after an examination of the whole ground of controversy, and of the respective titles of both parties. The impropriety of admitting it to have such an effect as contended for, is very apparent, because the state of the record from the court below does not present in such case to the court above, the whole pain of title produced by the parties respectively in the court below,and under which they claimed the possession of the land, and therefore it is, that the judgment of reversal cannot be considered a judgment concluding the parties from all further litigation of the title to the land. But in the case of an erroneous judgment being rendered in the court below, upon a case stated, issue joined in demurrer to the pleadings, or on demurrer to the evidence, the court above have, by the record returned to them, a view of the whole case presented to them, and will not only reverse the judgment of the court below, but give the judgment which the court below ought to have rendered, which is to be looked upon as the conclusion of the law resulting from all the facts and circumstances involved in the cause; whereas a judgment merely reversing the judgment of the court below, rendered upon a general verdict, may be and often is for a cause that does not ultimately vary or change the final determination of the case. And to say that the reversal of a judgment rendered upon a general verdict, without awarding a *venire facias de novo*, shall cause it to have a different effect from what it would otherwise have, and make it conclusive against all further litigation of the same cause of action, would be carrying it too far, and beyond the sanction of either reason, practice, or authority. It may furnish some ground to presume that the party against whom the writ of error was sued out, or the court, or both, if you please, thought that, from the nature of the case that had been disclosed, a *venire facias de novo* would not be likely to be available to the defendant in error, but not to prevent absolutely his bringing a new action in case he should afterwards change his mind, or discover that he can supply what was wanting before, or in any way overcome the difficulty or objection then interposed to his recovery.

Upon the whole, I am satisfied that upon the most equitable construction that the object assigned for the passing of the act, and from the terms em-

ployed in it, that the legislature did not intend to bar the party from bringing a new action of ejectment for the same land, upon the same title, until after two decisions should be had against him upon a full view and consideration of the whole of his case, and all the circumstances connected with it which he might think material, either by two judgments of a court of competent jurisdiction rendered upon general verdicts, special verdicts, cases stated, or in cases of demurrer to the pleadings or the evidence.

Beyond what the act in this behalf, upon a reasonable construction of it, will warrant, we are not at liberty to go. What a court of chancery would do, or has done, under similar circumstances, is not to be our guide, because I consider the act of assembly as having been given to us for the rule of our decision as to the number of actions of ejectments, verdicts, and judgments, that shall be a bar to any subsequent action between the same parties upon the same title for the same land.

The judgment of the circuit court is affirmed.

Signed and filed at the request of the counsel for plaintiff in error, and excepted by this form.

JOHN KENNEDY.

UNITED STATES OF AMERICA, *ss.*:

The President of the United States to the Honorable the Judges of the Supreme Court of the Commonwealth of Pennsylvania, for the Lancaster District, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in said court, being the highest court of law or equity of the said Commonwealth, in which a decision could be had in said suit, between John Mercer, surviving executor of James Mercer, deceased, plaintiff, and Jane Watson, and David Watson, Esther Watson, Maria Watson, Ann Margaret Watson, Samuel Patterson Watson, and Jane Jemima Watson, who are minors, by their guardian, the said Jane Watson, defendants, where is drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision is against their validity; or where is drawn in question the validity of a statute of, or an authority exercised under said State, on the ground of their being repugnant to the constitution, treaties, or laws of the United States, and the decision is in favor of such their validity; or where is drawn in question the construction of a clause of the constitution, or of a treaty, or statute of, or commission held under the United States, and the decision is against the title, right, privilege, or exemption, specially set up or claimed under such clause of the said constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said defendants, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf: do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of August next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be

done therein, to correct that error what of right, and according to the laws and custom of the United States, should be done.

Witness the Honorable John Marshall, Chief Justice of said Supreme Court, the second Monday of January, in the year of our Lord one thousand eight hundred and thirty-three.

WM. THOS. CARROLL.

Clerk of the Supreme Court of the United States.

Allowed by JOHN B. GIBSON.

Know all men by these presents, that we, David Watson and Christian Hess, both of Strasburg township, Lancaster county, and State of Pennsylvania, are held and firmly bound unto John Mercer, surviving executor of James Mercer, deceased, in the full and just sum of two hundred dollars, to be paid to the said John Mercer, surviving executor as aforesaid, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated this first day of June, in the year of our Lord one thousand eight hundred and thirty three.

Whereas, lately at a Supreme Court of the Commonwealth of Pennsylvania, for the Lancaster district, in a suit pending in said court between the said John Mercer, surviving executor of James Mercer, deceased, plaintiff, and Jane Watson, and David Watson, Esther Watson, Maria Watson, Ann Margaret Watson, Samuel Patterson Watson, and Jane Jemima Watson, who are minors, by their guardian, the said Jane Watson, defendants, judgment was rendered against the said defendants, and the said defendants having obtained a writ of error, and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said John Mercer, surviving executor of James Mercer, deceased, citing and admonishing to be and appear at a Supreme court of the United States to be holden at Washington, the first Monday of August next.

Now the condition of the above obligation is such, that, if the said Jane Watson, and David Watson, Esther Watson, Maria Watson, Ann Margaret Watson, Samuel Patterson Watson, and Jane Jemima Watson, who are minors, by their guardian, the said Jane Watson, shall prosecute their writ to effect, and answer all damages and costs, if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

DAVID WATSON. [SEAL.]
CHRISTIAN HESS. [SEAL.]

Sealed and delivered in presence of—

JOHN LIGHTNER.
JAMES HOPKINS.

Approved by JOHN B. GIBSON.

UNITED STATES OF AMERICA.

To John Mercer, surviving executor of James Mercer, deceased, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of August next, pursuant to a writ of error, filed in the clerk's office of the Supreme Court of the Commonwealth of Pennsylvania, for the Lancaster

district, wherein Jane Watson, and David Watson, Esther Watson, Maria Watson, Ann Margaret Watson, Samuel Patterson Watson, and Jane Jemima Watson, who are minors, by their guardian, the said Jane Watson, are plaintiff's in error, and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiff's in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the honorable JOHN B. GIBSON.

2177.

SUPREME COURT OF THE UNITED STATES.

Nos. 94--95.

WATSON AND OTHERS,

VERSUS

MERCER AND OTHERS.

IN ERROR TO THE SUPREME COURT OF PENNSYLVANIA.

Exhibits referred to in the records of said causes.

		Page.
No. 1.	Grant from the proprietaries of Pennsylvania to Samuel Patterson, 19th Oct., 1743	1
No. 2.	Deed from James Mercer and wife to Nathan Thompson, 30th May, 1785	3
No. 3.	Deed from Nathan Thompson to James Mercer, 30th May, 1785	5
No. 4.	Deed from Saml. P. Watson and wife to John G. Mock, 1st Feb., 1812	8
No. 5.	Act of Assembly "for the better confirmation of the estates," &c.	11
No. 6.	Assignment of errors in the Supreme Court U. S.	12

No. 1.

John Penn, Thomas Penn, and Richard Penn, esquires, true and absolute proprietaries, and governors in chief of the Province of Pennsylvania, and counties of Newcastle, Kent, and Sussex, on Delaware, to all unto whom these presents shall come, greeting:

Whereas, in pursuance and by virtue of a warrant under the seal of our land office, bearing date the twenty-ninth day of May, A. D. 1740, there was surveyed and laid out on the seventeenth day of June then next following, unto Samuel Patterson, of the county of Lancaster, a certain tract of land situate in Strasburg township, within the said county, beginning at a marked white-oak, on y^e^ north side of Pequea creek, and from thence extending up the said creek, on the several courses thereof, about two hundred and forty perches to a marked white-oak; thence by George Mackarel's land, south two hundred and twenty-two perches, to a marked white-oak, and east one hundred and six perches to a post; thence along a line of marked trees, south forty-eight perches, to a post; thence by Joseph Barnett's land, west two hundred and eight perches, to a marked hickory; thence by David Fiery's land, north northwest two hundred perches, to the place of

beginning, containing two hundred and ten acres, and the allowance of six acres per cent. for roads and highways, as in and by the survey thereof remaining in our surveyor general's office, and from thence certified into our secretary's office, may appear.

Now, at the instance and request of the said Samuel Patterson, that we would be pleased to grant him a confirmation of the same: know ye, that, in consideration of the sum of thirty-two pounds eleven shillings lawful money of Pennsylvania, to our use paid by the said Samuel Patterson, the receipt whereof we hereby acknowledge, and thereof do acquit and forever discharge the said Samuel Patterson, his heirs and assigns, by these presents, and of the yearly quit-rent hereinafter mentioned and reserved, we have given, granted, released, and confirmed, and by these presents, for us, our heirs and successors, do give, grant, release, and confirm, unto the said Samuel Patterson, his heirs and assigns, the said two hundred and ten acres of land, as the same are now set forth, bounded and limited as aforesaid; with all mines, minerals, quarries, meadows, marshes, savannahs, swamps, crippels, woods, underwoods, timber and trees, ways, waters, water-courses, liberties, profits, commodities, advantages, hereditaments, and appurtenances whatsoever thereunto belonging, or in anywise appertaining, and lying within the bounds and limits aforesaid, (three full and clear fifth parts of all royal mines, free from all deduction and reprisals for digging and refining the same; and also one fifth part of the ore of all other mines, delivered at the pit's mouth, only excepted and hereby reserved,) and also free leave, right, and liberty to and for said Samuel Patterson, his heirs and assigns, to hawk, hunt, fish, and fowl, in and upon the hereby granted land and premises, or upon any part thereof: to have and to hold the said 210 acres of land and premises hereby granted, (except as before excepted,) with their appurtenances, unto the said Samuel Patterson, his heirs and assigns, to the only use and behoof of the said Samuel Patterson, his heirs and assigns forever: to be holden of us, our heirs and successors, proprietaries of Pennsylvania, as our manor of Conestogo, in the said county of Lancaster aforesaid, in free and common socage by fealty only, in lieu of all other services, yielding and paying therefor yearly unto us, our heirs and successors, at the town of Lancaster, in the said county, at or upon the first day of March in every year, from the first day of March last past, one-half penny stg. for every acre of the same, or value thereof in coin current, according as the exchange shall then be between our said province and the city of London, to such person or persons as shall, from time to time, be appointed to receive the same. And in case of non-payment thereof within ninety days next after the same shall become due, that then it shall and may be lawful for us, our heirs and successors, our and their receiver or receivers, into and upon the hereby granted land and premises to re-enter, and the same to hold and possess, until the said quit-rent, and all the arrears thereof, together with the charges accruing by means of such non-payment and re-entry, be fully paid and discharged.

Witness, George Thomas, esquire, Lieutenant Governor of the said province, who, in pursuance and by virtue of certain powers and authorities to him for this purpose (inter alia) granted by the said proprietaries, hath hereunto set his hand, and caused the great seal of the said province to be hereunto affixed, at Philadelphia, this nineteenth day of October, in the year of our Lord one thousand seven hundred and forty-three, the seventeenth year

of the reign of King George the Second over Great Britain, &c., and the twenty-sixth year of the said proprietaries' government.

GEORGE THOMAS. [SEAL.]

Recorded the first day of April, 1747.

I do hereby certify that the within is a copy of a patent recorded in patent book A 13, pages 182, 183, and 184, remaining in the office of the secry. of the land office of Penna.

In testimony whereof, I have hereunto set my hand, and affixed [SEAL.] the seal of said office at Harrisburg, this 13th day of January, 1834.

R. M. CRAIN,
Deputy Secy. Ld. Office.

No. 2.

This indenture, made the thirtieth day of May, in the year of our Lord one thousand seven hundred and eighty-five, between James Mercer, of Strasburgh township, in the county of Lancaster, and State of Pennsylvania, esquire, and Margaret, his wife, of the one part, and Nathan Thompson, of Sadsbury township, in the county and State aforesaid, yeoman, of the other part, witnesseth that the said James Mercer, and Margaret his wife, for and in consideration of the sum of eight hundred pounds lawful money of Pennsylvania aforesaid, to them in hand well and truly paid by the said Nathan Thompson at or before the sealing and delivery of these presents, the receipt and payment whereof is hereby acknowledged, and thereof and of every part and parcel thereof doth exonerate, acquit, release, and forever discharge the said Nathan Thomson, his heirs and assigns, by these presents, have granted, bargained, sold, aliened, enfeoffed, released, and confirmed, and by these presents do, and each of them doth grant, bargain, sell, alien, enfeoff, release, and confirm unto the said Nathan Thompson, his heirs and assigns forever, all that plantation and tract of land situate and being in Strasburgh township, in the county and State aforesaid. Beginning at a write-oak, a corner of George Accord's land, thence by the same east one hundred and six perches, to a post; thence south fifteen perches to a post; thence by land of the heirs of Joseph Patterson, deceased, west one hundred and twenty-four perches to a post; thence by the same, north one hundred and ten perches, to a post; thence by the same west five perches to a post; thence by the same north one hundred and thirty-five and a half perches to Pequea creek; thence up said creek twenty-three perches and five links to a post; thence by land of George Accord aforesaid, south two hundred and twenty-eight perches to the place of beginning, containing forty-one acres and a half of land, and also one moiety or equal undivided half part of a certain piece or parcel of land situate in Strasburg township aforesaid, adjoining the above described piece of land beginning at a post, being a corner thereof; thence by the same west one hundred and twenty-four perches to a post; thence by the same north one hundred and ten perches to a post; thence by the same west five perches to a post; thence by the same north thirty-five and a half perches to Pequea creek; thence down the said creek, on the north side thereof, by the several courses thereof one hundred and forty-eight perches to a post; thence by land of David Watson in right

of his wife, south seven degrees east, one hundred and thirteen perches to a post; thence by the same south eighty-six degrees west forty perches to a post; thence by lands of Matthew McClung and Jacob Beck, south southwest, eighty-seven perches to a post; thence by the same east, two hundred and seventeen perches to a white-oak; and thence north, thirty-eight perches to the place of beginning, containing one hundred and sixty acres. [They being part of a larger tract of two hundred and ten acres, and allowance of six p. cent. for roads and highways, which the honorable the proprietaries of Pennsylvania, by their patent bearing date the nineteenth day of October, in the year of our Lord one thousand seven hundred and forty-three, recorded in the rolls office at Philadelphia in patent book A, vol. 13, page 182, granted and confirmed unto Samuel Patterson in fee. And the said Samuel Patterson died intestate, leaving issue John, Margaret, (now Margaret Mercer, party hereto,) Samuel, Joseph, and Sarah, all of whom, save Margaret and Sarah, have since died intestate, unmarried, and without issue, after arriving to full age, and the first described tract of forty-one acres and a half, with the appurtenances, by a writ of partition issuing out of the court of common pleas of the county of Lancaster aforesaid, of the August term, in the year of our Lord one thousand seven hundred and eighty-four, and duly executed by Thomas Edwards, esquire, high sheriff of the county aforesaid, and twelve good and lawful men of his bailiwick was allotted, assigned, and delivered unto the said James Mercer, in right of his wife Margaret Mercer, to be by him held in severalty. And the second described tract of one hundred and sixty acres, with the appurtenances, was by the sheriff and inquest aforesaid, by the authority aforesaid, allotted, assigned, and delivered to Joseph Patterson, to be by him held in severalty, which said Joseph has since died intestate, unmarried, of full age, and without any other heirs save the said Margaret Mercer and Sarah Watson, sisters of the said Joseph Patterson deceased, as in and by the said patent and records of the court of common pleas of the county of Lancaster aforesaid, reference thereunto being had, may more fully and at large appear.] Together with all and singular the buildings, improvements, liberties, privileges, hereditaments, and appurtenances, whatsoever, unto the aforesaid tract of forty-one acres and a half, and unto the aforesaid moiety or undivided half part of the above described tract of one hundred and sixty acres of land, belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, property, claim, and demand whatsoever of them, the said James Mercer and Margaret his wife, or either of them, of, in, and to the same, or any part thereof, to have and to hold the said tracts of land, hereditaments, and premises hereby granted, or mentioned to be granted, with the appurtenances, unto the said Nathan Thompson, his heirs and assigns, to the only proper use, benefit, and behoof of him the said Nathan Thompson, his heirs and assigns forever. And the said James Mercer and Margaret his wife doth covenant, promise, and grant for themselves, their heirs, executors, and administrators, to and with the said Nathan Thompson, his heirs and assigns, that they, the said James and Margaret, and all and every other person and persons, any thing having in the said premises hereby granted, or intended so to be, or any part thereof, with the appurtenances, shall and will from time to time, and at all times hereafter, upon the reasonable request, and at the proper cost and charges of him the said Nathan Thompson, make, do, and execute, or cause to be made, done, and executed, all and every such further and

other act and acts, conveyances and assurances in the law whatsoever, for the better, more sure and perfect conveying and confirming the above described two tracts of land, with the appurtenances, unto the said Nathan Thompson, his heirs and assigns, as by him or them, or his or their counsel learned in the law, shall be reasonably advised or required. And the said James Mercer and Margaret his wife, and their heirs, the said two pieces or parcels of land above described, with the appurtenances, unto the said Nathan Thompson, his heirs and assigns, against him, her, and them, and against all and every other person and persons whomsoever, lawfully claiming the said premises, or any part thereof, by, from, or under him, her, or them, will warrant and forever defend by these . In witness whereof, the said parties to these presents have hereunto interchangeably set their hands and seals, the day and year first above written.

JAMES MERCER. [SEAL.]
MARGARET MERCER. [SEAL.]

Sealed and delivered in the presence of

HENRY SLAYMAKER.
MARY HUMES.

Received on the day of the date of the above written indenture of the abovementioned Nathaniel Thompson, the sum of eight hundred pounds in full, the consideration within mentioned—£800.

Witness present,
HENRY SLAYMAKER.

LANCASTER COUNTY, *ss.*

Personally appeared before me, the subscriber, one of the justices of the court of common pleas for the county aforesaid, the within named James Mercer, and Margaret his wife, and acknowledged the above written indenture to be their act and deed, and desired that as such the same might be recorded, she the said Margaret being of full age, and by me examined *appart.*

In testimony whereof, I have hereunto set my hand and seal, this 30th day of May, Anno Domini 1785.

HENRY SLAYMAKER. [SEAL.]

Recorded the 16th day of June, 1785.
Exd. per JAMES JACKS, *Recorder.*

PENNSYLVANIA, LANCASTER COUNTY, *ss.*

I, Jacob Peelor, recorder of deeds, &c. in and for said county, do certify that the above and within is a true copy of the record taken from book CC. page 588, &c.

[SEAL.] Witness my hand and seal of office at the city of Lancaster, January 11th, 1834.

JACOB PEELOR, *Recorder.*

No. 3.

This indenture, made the thirtieth day of May, in the year of our Lord one thousand seven hundred and eighty-five, between Nathan Thompson, of Sadsbury township, in the county of Lancaster, and State of Pennsylva-

nia, yeoman, of the one part, and James Mercer, of Strasburgh township, in the county and State aforesaid, esq. of the other part, witnesseth that the said Nathan Thompson, for and in consideration of the sum of one thousand pounds lawful money of Pennsylvania, to him in hand well and *truely* paid by the said James Mercer, at or before the sealing and delivery of these presents, the receipt and payment whereof is hereby acknowledged, and thereof and of every part and parcel thereof, doth exonerate, acquit, release, and discharge the said James Mercer, his heirs and assigns, forever, by these presents have granted, bargained, sold, aliened, enfeoffed, released, and confirmed, and by these presents doth grant, bargain, sell, alien, enfeoff, release, and confirm, unto the said James Mercer, his heirs and assigns forever, all that plantation and tract of land situate and being in Strawsburgh township, in the county and State aforesaid, beginning at a white-oak, a corner of George Accord's land; thence by the same east one hundred and six perches to a post; thence south fifteen perches to a post; thence by land of the heirs of Joseph Patterson deceased, west one hundred and twenty-four perches to a post; thence by the same north one hundred and ten perches to a post; thence by the same west five perches to a post; thence by the same north one hundred and thirty-five and a half perches to Pequea creek; thence up said creek twenty-three perches and five links to a post; thence by land of George Accord aforesaid, south two hundred and twenty-eight perches to the place of beginning, containing forty-one acres and a half of land. And also one moiety or equal undivided half part of a certain piece or parcel of land situate in Strasburgh township aforesaid, adjoining the above described piece of land, beginning at a post being a corner thereof; thence by the same west one hundred and twenty-four perches to a post; thence by the same north one hundred and ten perches to a post; thence by the same west five perches to a post; thence by the same north thirty-five and a half perches to Pequea creek; thence down the said creek on the north side thereof, by the several courses thereof, one hundred and forty-eight perches to a post; thence by land of David Watson in right of his wife Sarah Watson, south seven degrees east, one hundred and thirteen perches to a post; thence by the same south eighty-six degrees west forty perches to a post; thence by lands of Matthew McClung and Jacob Beck, south southeast eighty-seven perches to a post; thence by the same east two hundred and seventeen perches to a white oak; and thence north thirty-eight perches to the place of beginning, containing one hundred and sixty acres. [They being part of a larger tract of two hundred and ten acres, and allowance of six p. cent. for roads and highways, which the honorable the proprietaries of Pennsylvania by their patent, bearing date the nineteenth day of October, in the year of our Lord one thousand seven hundred and forty-three, recorded in the rolls office at Philadelphia, in patent book A, vol. 13, page 182, granted and confirmed unto Samuel Patterson in fee, and the said Samuel Patterson died intestate, leaving issue John, Margaret, (since intermarried with James Mercer, party hereto,) Samuel, Joseph, and Sarah, all of whom save Margaret and Sarah have since died intestate, unmarried, and without issue, after arriving to full age, and the first described tract of forty-one acres and a half, with the appurtenances, by a writ of partition issuing out of the court of common pleas of the county of Lancaster aforesaid, of the August term, in the year of our Lord one thousand seven hundred and eighty-four, and duly executed by Thomas Edwards, esquire, high sheriff of the county aforesaid, and twelve good and lawful men of his bailiwick, was allotted, assigned,

and delivered unto the said James Mercer in right of his wife Margaret, to be by him held in severalty, and the said tract of one hundred and sixty acres, with the appurtenances, was by the sheriff and inquest aforesaid, by the authority aforesaid, allotted, assigned, and delivered to Joseph Patterson, to be by him held in severalty, which said Joseph has since died intestate, unmarried, of full age, and without issue, or any other heirs save Margaret, the wife of said James Mercer and Sarah Watson, sister of the said Joseph Patterson, deceased, and the said James Mercer and Margaret his wife, by their indenture, bearing even date with this indenture, for the consideration therein mentioned, did grant and confirm the above described two tracts of land, with their appurtenances, unto the said Nathan Thompson, his heirs and assigns, as in and by the said patent records of the court of common pleas of the county of Lancaster aforesaid, and indenture, reference thereunto being had, may more fully and at large appear:] Together with all and singular the buildings, improvements, liberties, privileges, hereditaments, and appurtenances whatsoever unto the aforesaid tract of forty-one acres and a half, and unto the aforesaid moiety or undivided half part of the above described tract of one hundred and sixty acres of land belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, property, claim, and demand whatsoever, of him the said Nathan Thompson, his heirs and assigns, of, in and to the same, or any part thereof; to have and to hold the said two tracts of land, hereditaments, and appurtenances hereby granted, or mentioned to be granted, unto the said James Mercer, his heirs and assigns, to the only proper use, benefit and behoof of him, the said James Mercer, his heirs and assigns forever, under and subject nevertheless to the following incumbrance, to wit: that Margaret Mercer, wife of the said James Mercer, shall have the absolute right of disposing of one hundred and fifty pounds lawful money of Pennsylvania, payable out of the aforesaid tracts of land, and provided the said Margaret should survive or outlive him the said James, then the said Margaret shall enjoy all the rents, issues, and profits of the said two tracts of land during her natural life, together with the aforesaid right of disposing of one hundred and fifty pounds lawful money aforesaid, which the said James Mercer, for himself, his heirs, executors, administrators, and assigns, doth covenant and agree that she, the said Margaret Mercer, shall peaceably and quietly enjoy, without any lett, hindrance, or interruption of him the said James Mercer, his heirs, executors, administrators, or assigns. And the said Nathan Thompson doth covenant, promise, and grant for himself, his heirs, executors, and administrators, to and with the said James Mercer, his heirs and assigns, that he, the said Nathan Thompson, his heirs, executors, and administrators, and all and every other person and persons whomsoever, any thing having or lawfully claiming in or to the said premises, or any part thereof hereby granted, or intended so to be, shall and will from time to time, and at all times hereafter, upon the reasonable request, and at the proper costs and charges of him the said James Mercer, make, do, and execute, or cause to be made, done, and executed, all and every such further and other act and acts, conveyances and assurances in the law whatsoever, for the better, more sure and perfect conveying and confirming the above described two tracts of land, with the appurtenances, unto the said James Mercer, his heirs and assigns, as by him or them, or by his or their counsel learned in the law, shall be reasonably advised or required. And the said Nathan Thompson, his ex-

ecutors, administrators, and assigns, the said two pieces or parcels of land above described, with their appurtenances, unto the said James Mercer, his heirs and assigns, against him the said Nathan Thompson and his heirs, and against all and every other person and persons whomsoever, lawfully claiming, or to claim the said premises, or any part thereof, by, from, or under him or them, or any of them, shall and will forever warrant and defend by these presents. In witness whereof, the said Nathan Thompson hath hereunto set his hand and seal, the day and year first above written.

NATHAN THOMPSON. [SEAL.]

Sealed and delivered in the presence of

HENRY SLAYMAKER.
MARY HUMES.

Received on the day of the date of the above written indenture, of the above named James Mercer, the sum of one thousand pounds, in full of the consideration within mentioned —£1,000.

Witness present:

HENRY SLAYMAKER.

LANCASTER COUNTY, *ss.*

Personally appeared before me, the subscriber, one of the justices of the court of common pleas for the county aforesaid, the abovementioned Nathan Thompson, and acknowledged the within indenture to be his act and deed, and desired that as such the same might be recorded.

In testimony whereof, I have hereunto set my hand and seal, the 30th day of May, 1785.

HENRY SLAYMAKER, [SEAL.]

Exd. Recorded the 16*th* day of *May*, 1785.

per JAMES JACKS, *Recorder.*

PENNSYLVANIA, LANCASTER COUNTY, *ss.*

I, Jacob Peelor, recorder of deeds, &c. in and for said county, do certify that the within is a true copy of the record taken from book CC, page 591, &c.

[SEAL.] Witness my hand and seal of office at the city of Lancaster, January 13th, 1834.

JACOB PEELOR, *Recorder.*

No. 4.

This indenture, made the first day of February, in the year of our Lord one thousand eight hundred and twelve, between Samuel Patterson Watson, of the township of Strasburg, county of Lancaster, and State of Pennsylvania, yeoman, and Jane, his wife, of the one part, and John G. Mock, of the township, county and State aforesaid, tailor, of the other part, witnesseth that they, the said Samuel Patterson Watson and Jane his wife, for and in consideration of the sum of one hundred and seventy-one dollars in gold or silver coin, current money of Pennsylvania, to them or one of them in hand well and truly paid by the said John G. Mock, at and before the en-

sealing and delivery hereof, the receipt andpayment whereof they, and each of them, do hereby acknowledge, and thereof acquit and forever discharge the said John G. Mock, his heirs, executors, and administrators, by these presents, have, and each of them hath granted, bargained, sold, aliened, enfeoffed, released, and confirmed, and by these presents do, and each of them doth grant, bargain, sell, alien, enfeoff, release, and confirm unto the said John G. Mock, and to his heirs and assigns, all this the following and described lot or piece of land, (being No. 4 and 5,) situate, lying, and being in the said township of Strasburg, bounded and described as follows, viz. Beginning at a post, a corner of lot No. 3, this day to be conveyed to Martin Pitzer; thence by the same north three degrees and a half west, eight perches nine-tenths and a half to a post, in a line of other land of the said Samuel Patterson Watson; thence by the same north eighty-five degrees and three-quarters east, seventeen perches and nine-tenths to a post, a corner of lot No. 6, this day to be conveyed to the said Martin Pitzer; thence by the same south three degrees and a half, east eight perches nine tenths and a half, to a post; and thence by other lots south eighty five degrees and three-quarters west, seventeen perches and nine-tenths to the place of beginning, containing one acre neat measure; (it being part of a larger tract containing two hundred and ten acres, and allowance that the proprietors of Pennsylvania, in and by their patent bearing date the nineteenth day of October, Anno Domini 1743, for the consideration therein mentioned, did grant and convey unto a certain Samuel Patterson in fee, as in and by the said patent recorded in the rolls office at Lancaster, in patent book A, vol. 13, page 182, &c. Reference thereunto being had may more fully and at large appear.) Together with all and singular other the houses, outhouses, buildings, barns, stables, ways, woods, waters, watercourses, rights, liberties, privileges, hereditaments, and appurtenances whatsoever, thereunto belonging, or in anywise appertaining, (saving and excepting, and always reserving the width of eleven feet along the south end of the abovementioned and described lot, so far as the said lot extends along other lots already laid out and adjoining the same, for the use of a road, passage or alley, and the said John G. Mock, his heirs and assigns, are from time to time, and at all times hereafter, forever to keep up all the fence along the north end of the abovementioned and described lot, so far as said lot extends along the other land of the said Samuel Patterson Watson,) and the reversion and remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest, use, trust, property, possession, claim, and demand whatsoever, of them, the said Samuel Patterson Watson and Jane his wife, in law or equity, or otherwise howsoever, of, in, to, or out of the same, or any part thereof. To have and to hold the said abovementioned and described lot or piece of land, hereditaments and premises hereby granted or mentioned, or intended so to be, with the appurtenances, (except as before is excepted and reserved unto the said John G. Mock, his heirs and assigns, to the only proper use, benefit and behoof of the said John G. Mock, his heirs and assigns forever. And the said Samuel Patterson Watson and Jane his wife, for themselves, their heirs, executors, and administrators, doth covenant, promise, grant, and agree to and with the said John G. Mock, his heirs and assigns, by these presents, that they the said Samuel Patterson Watson and Jane his wife, and their heirs, the said abovementioned and described lot or piece of land containing one acre neat measure as aforesaid, hereditaments and premises hereby granted or mentioned, or intended so to be, with the appurtenances, (except as before is excepted and reserved) unto

the said John G. Mock, his heirs and assigns, against them the said Samuel Patterson Watson and the said Jane his wife, and their heirs, and against all and every other person and persons whomsoever, lawfully claiming, or to claim by, from, or under him, her, them, or any of them, shall and will warrant and forever defend by these presents. In witness whereof, the said Samuel Patterson Watson, and Jane his wife, have hereunto interchangeably set their hands and seals, the day and year first above written.

SAML. P. WATSON. [SEAL.]
JEAN WATSON. [SEAL.]

The words "except as is" wrote on the erasure in the twenty-second line before signing.

Sealed and delivered in presence of

GEORGE ECKERT, junr.
THOS. CRAWFORD.

Received on the day of the date of the above written indenture, of and from the above named John G. Mock, the consideration money abovementioned in full, $171.

SAML. P. WATSON.

Witness present at signing,

GEORGE ECKERT, junr.
THOS. CRAWFORD.

LANCASTER COUNTY, *ss.*

Before me, the subscriber, one of the justices of the peace in and for the county of Lancaster aforesaid, personally appeared the within named Samuel Patterson Watson, and Jane his wife, and acknowledged the within written indenture of conveyance to be their act and deed to and for the uses and purposes within mentioned, and desired that the same may be recorded as such according to law, she the said Jane thereunto voluntarily consenting, she being of full age, and seperate and apart from her said husband, by me thereon examined, the contents having been first made known unto her.

In testimony whereof, I have hereunto set my hand and seal, this first day of February, Anno Domini 1812.

GEORGE ECKERT, junr. [SEAL.]

Exd. Recorded May first, A. D. 1813.

per WILLIAM BAUSMAN, *Rec'r.*

PENNSYLVANIA, LANCASTER COUNTY, *ss.*

I, Jacob Peelor, recorder of deeds, &c. in and for said county, do certify that the above and within is a true copy of the record taken from book No. 7, page 289, &c.

[SEAL.] Witness my hand and seal of office at the city of Lancaster, January 15th, 1834.

JACOB PEELOR, *Recorder.*

No. 5.

A supplement to an act entitled "An act for the better confirmation of the estates of persons holding or claiming under feme coverts, and for establishing a mode in which husband and wife may hereafter convey their estates."

Whereas, by the act of Assembly to which this is a supplement, it is enacted that the estates of feme coverts may be transferred by deed executed by the husband and wife, and by them acknowledged before certain officers: And whereas, under this act, estates of great value have been bona fide sold by husband and wife for a legal and sufficient consideration, and the deeds therefor have been by them acknowledged before the proper officer; but in many cases, the mode of making such acknowledgment hath been imperfectly set forth in the certificate: And it hath been held by the Supreme Court, that deeds transferring the rights and interests of feme coverts are invalid and void, unless certain requisites of the acknowledgment of such deeds provided by the said act, shall appear upon the face of the certificate of such knowledgment to have been pursued, and in all such cases it is but just and reasonable that persons who hold such estates should not in any case be disturbed in the enjoyment of them thus equitably acquired, nor divested thereof under any pretence whatsoever: Now, for the purpose of carrying into effect the real intent of the parties, and of quieting and securing the estates so transferred,

Section 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same,* That no grant, bargain, sale, feoffment, deed of conveyance, lease, release, or other assurance of any lands, tenements, and hereditaments whatsoever, heretofore bona fide made and executed by husband and wife, and acknowledged by them before some judge, justice of the peace, or other officer authorized by law within this State, or an officer in one of the United States, to take such acknowledgment, or which may be so made, executed, and acknowledged as aforesaid, before the first day of September next, shall be deemed, held, or adjudged invalid, or defective, or insufficient in law, or avoided or prejudiced by reason of any informality or omission in setting forth the particulars of the acknowledgment made before such officer as aforesaid in the certificate thereof, but all and every such grant, bargain and sale, feoffment, deed of conveyance, lease, release, or other assurance so made, executed, and acknowledged as aforesaid, shall be as good, valid, and effectual in law, for transferring, passing, and conveying the estate, right, title, and interest of such husband and wife, of, in, and to the lands, tenements, and hereditaments mentioned in the same, as if all the requisites and particulars of such acknowledgment mentioned in the act to which this is supplementary, were particularly set forth in the certificate thereof, or appeared upon the face of the same.

JOSEPH RITNER,
Speaker of the House of Representatives.

ALEXANDER MAHON,
Speaker of the Senate.

Approved the third day of April, one thousand eight hundred and twenty-six.

J. ANDW. SHULZE.

SECRETARY'S OFFICE, HARRISBURGH,
January 13th, 1834.

I hereby certify that the above and foregoing is a true and correct copy of a supplement to an act entitled "An act for the better confirmation of the estates of persons holding or claiming under feme coverts, and for establishing a mode in which husband and wife may hereafter convey their estates," remaining on file and of record in the said office

[SEAL.] Witness my hand and seal of said office, the day and year aforesaid.

JAMES FINDLAY,
Secretary of the Commonwealth.

No. 6.

DAVID WATSON and others, plaintiffs in error, } In the Supreme Court
vs. } of the United States from
JOHN and MARGT. MERCER, defts. in error, } Penna.

Assignment of errors.

1. That James Mercer never had any right to the real estate of his wife Margaret, other than his marital rights, the pretended deed of the 30th May, 1785, being absolutely void, and a mere nullity.

1. Because the act of 1770 created a mode of conveyance, by which alone a feme covert could convey her real estate, and short of a conformity to which she could not act at all, which conformity consisted as well in the matter and execution as in the acknowledgement, the want of any of which rendered the whole instrument waste paper.

2. Because it was judged to be utterly null and void as a deed by the judgment of the circuit court, on the 13th day of May, 1807, by the judgment of the Supreme Ct. on the 31st day of December, 1808, confirming the judgment of the circuit ct. by the judgment of the ct. of common pleas, in the action of trespass for the mesne profits on the day of 1814, by the judgment of the Supreme Ct. on the day of 1820, and admitted to be so by the defts. in error, by their becoming nonsuit in their action of ejectment for the same land on the 12th day of March, 1821, which extinguished forever the pretended deed of May 30th, 1785, and all alleged claim under it, and left nothing for the act 3d April, 1826, to operate upon.

3. Because by the descent of the real estate of Margaret Mercer on her death, intestate and without issue, in 1802, to Sarah Watson, her sister and only heir at law, by the eject'nt brought by the said Sarah and her husband agst. James Mercer, her tenant at sufferance to Feby. term, 1802, destroying the tenancy and making his possession hers, by the judnt. rendered in favor of the said Sarah and her husband in the circuit ct. on the 13th May, 1807, confirmed by the Sup. Ct. on the 31st day of Dec., 1808. By the descent cast on the death of the said Sarah Watson on her only child, Saml. P. Watson, revg. the judgt. rendered by the Supreme Ct. in the action of ejectment brought by Margt. and John Mercer agst. the sd. Saml. P. Watson, on the day , 1820, all of which judgments were rendered in favor of the said descents agst. the said alleged instrument of the 30th of May, 1785, urged by the prest. defts in error, in destruction of

the said descents, submitted to by the defts. by the nonsuit in the other ejectment they had brought. And the third descent under the act of Assembly on the death of Saml. P. Watson intestate in 1821, to his widow and children, the present pltffs. in error, rendered the title of the present pltffs. in error under the said descents so validated by the said juds. conclusive title agst. the defts. in error, claiming under the sd. instrument of the 30th May, 1785, their only pretence of claim.

4. Because the claim of the defts. in error, if they could have had any under the deed of the 30th May, 1785, was barred by the stat. of lim, of the 26th March, 1785, before the act of the 3d of April, 1826, passed.— Margt. Mercer died intestate, without issue, in January, 1802, leaving her husband surviving, who continued the possession. On the 4th of Feby., 1802, David Watson, and Sarah her sister, her sole heir and his wife's, sued an ejectment agst. James Mercer, who continued the possession after his wife's death, to recover these lands, laying their demise on first of said Feby. This suit abated in 1804. The 4th of Feby., 1805, Watson and wife brought a new ejectment, laying the demise and ouster on 4th Dec., 1804, and recovered by the judgt. of the circuit and Supreme Cts. the 31st Dec. 1808; and on hab. facs. possm. issued to March, 1809, and pltffs. put in possession, a suit was brought for the mesne profits, in which $1,200 was recovered by verdict and judgt. in 1804. On Sarah Watson's death intestate, seized and possessed as aforesaid, her real estate so recovered, descended under the act of intestacy of the 19th of April, 1794, to her only child Saml. P. Watson. John and Margaret Mercer brought an ejectment agst. the said Saml. P. Watson to January term, 1818, No. 25, for the lands so descended; verdict and judgt. in the common pleas, declaring the deed of 30th May, 1785, valid, on a question put to them by the defts. Writ of error to the Supreme Ct. judgt. reversed, and no venire de novo accorded. In another eject. for same lands by Jno. and Margaret Mercer agst. Samuel P. Watson, on the 12th of March, 1821, a nonsuit was entered. Samuel Watson thus continuing seized and possessed in 1821, died intestate, and the lands now in dispute descended under the act of intestacy to his widow and children, the present pltffs. in error, who continued their right and possession until the act of the 3d of April, 1826, and still are in possession. The ejectment in the first record was sued on the 26th of April, 1826. The ejectment in the last record was brought on the 6th day of May, 1829.

Both these ejectments are barred by the statute of limitations. From the 4th of Feb., 1802, when the first eject. was brought, till the passage of the act of the 3d April, 1826, being 24 yrs., less one day. From the 4th of Feby., 1805, laying the demise and ouster on the 4th of Dec. preceding, until the passage of the sd. act, wd. be from the demise and ouster 21 yrs. and 4 mos., less 2 days; and from the day of suit brought would be 21 yrs. 1 mo. and 29 days, so that qua cun que via data the stat. was an absolute bar. Because this eject. is barred by the act of Assembly of the 13th of April, 1807, which enacts, "where two verdicts shall in any writ of ejectment between the same parties be given in succession for the pltff. or deft., and judgment be rendered thereon, no new ejectment shall be brought; but where there may be verdict agst. verdict between the same parties, and judgt. thereon, a third eject. in such case, and verdict and judgt. thereon shall be final and conclusive, and bar the right.

In the suit brought the 4th Feby., 1805, on the trial in the circuit ct., the pltff. made title as heir at law of Margt. Mercer, to repel which defts. gave

in evidence the deed of 30th of May, 1785, and took an issue in law thereon to the ct., who having decided that point agst. them, the cause was removed to the Sup. Ct., who on the 31st Dec., 1808, confirmed the judgt. of the circuit ct., and the lands recovered in the sd. eject. having descended on the death of the sd. Sarah Watson to Saml P. Watson, her heir at law, John and Margt. Mercer sued an eject. agst. him to Jany. term, 1818, and on trial, pltffs. made title under the sd. deed of the 30th May, 1785, and the deft. then and there in writing filed of record, asked the ct. to charge the jury that said deed was not sufficient to convey the inheritance and to sustain his suit, so as to destroy the descent of the estate to the deft. and her heir at law. Whereupon the ct. charged the jury that it was sufficient to convey the inheritance and bar the descent thereof to the deft., and a verdict and judgt. was rendered accordingly for the pltff. Whereupon a writ of error being brought by the deft., the Sup. Ct. on the of 1820, reversed the judgt. of the lower ct., and did not award a venire de novo. An issue in law being then taken in both suits on this very deed, and the verdict for the pltff. being the form of justice to attain its end thro' the decision of the Supreme Ct. like a special verdict, a case stated, or a demurrer, which this is, both in law and equity, a conclusive extinguishment of this deed as being null and void to all intents and purposes, and a bar to this suit under the above act. And as a ct. of equity would grant a perpetual injunction under the facts disclosed upon this record agst. all further proceedings on the deed of the 30th May, 1785, so in Penna., where equity is administered without its forms by our courts, this act should be so construed as to give full effect to this equity.

The ct. erred in holding that the deft's title was destroyed by the act of 3d April, 1826, read and relied on by the defts. in error in this cause.

The deft. showed that they had a complete legal title under a patent granted by the late proprietaries to Samuel Paterson on the 9th of October, 1743, for full value for the lands in question, which came by a regular course of descent, and vested in Margt. Mercer in fee simple.

Though they showed that the said Margt. Mercer died intestate, and without issue, seized in fee of the lands in dispute, leaving Sarah, her sister, married to David Watson, her sole heir at law.

Though they showed that on the death of the sd. Margt., her husband James Mercer, who survived her, continued in possession as tenant at sufferance from her death in January, 1802.

Though they showed that David Watson and Sarah his wife sued an eject. agst. the said James Mercer on the 4th of February, 1802, to destroy the sd. tenantry, and oust the sd. tenant, which eject. abated by the death of the sd. James Mercer in 1804.

Though they showed that the sd. John Mercer and others were made executors by the will of the sd. James Mercer, and authorized to sell the real estate of his late wife Margt. Mercer, which he pretended to claim under an alleged deed taken from her under the influence of his marital rights dated the 30th of May, 1785, and that the sd. David Watson and Sarah his wife, on the 4th of Feby., 1805, brought an eject. agst. the sd. John Mercer and the other executors of the sd. will, who made their defence on the sd. deed and will, and on the trial of the sd. eject. demanded of record of the circuit ct. who tried the said cause, to declare the said deed to be a valid deed, conveying the sd. real estate, and interrupting and destroying the descent to the sd. Sarah, to which call so made the ct. answered that the sd. deed was void,

and neither transferred the estate nor impaired the descent to the sd. Sarah, and a verdict and judgt. was rendered for the pltffs.; from which decision of the circuit ct. the defts. appealed to the Supreme Ct., who on the 31st of Dec., 1808, confirmed the judgment of the circuit ct. Tho' they showed that on a hab. fac. poss. issued to March term, 1809, the sd. John Mercer and others, the ex'ors, were turned out of possession, and the said David Watson and Sarah his wife put in possession, thereby expurgating the wrong of the sd. James Mercer intortously holding over his sd. tenancy, and retromiting the possession so wrongfully withheld by him and his ex'ors to the descent when first cast and accruing, thereby uniting the possession to the right making the trespasser's possession the owner's possession, through the whole period of the continuance, and preventing James Mercer and his devisees from deriving any advantage of his own wrong.

Tho' they showed to the ct. that the lawless withholding of the possession from the heir had not only been extinguished, but that the tort feasors were made to make full compensation for their tort and retension of the possession in an action for a mesne profits to the amount of $1,200, not leaving a trace behind of the unjust detention.

Though they showed that Sarah Watson had by the intestate law co-operating with the judgt. of the Supreme Ct. of the 31st of Dec., 1808, had an absolute title, which, on her death intestate seized thereof, descended to her only son Saml. P. Watson, giving the protection of a second descent to their previous title.

Though they showed that John and Margt. Mercer still pretending claim under the sd. deed of May 30, 1785, and the will of the sd. James Mercer, which had been directly put in issue as to their legal character and operation, and been adjudicated upon, brought an eject. for the same lands agst. sd. Samuel P. Watson to Jany. t., 1818, in the com. pleas, in which the pltff. resting his case on the sd. deed and will as this only title asked of record, the ct. to charge the jury that the sd. deed was valid, and transferred the estate to James Mercer, and cut off the descent, and that they should find for the pltff: and the deft. did then and there by his request filed of record, ask the ct. to instruct the jury that the sd. deed was null and void, and that the estate descended to the deft., and the ct. thereupon declared the said deed to be valid, and that it did destroy the descent to the sd. Sarah Watson, and from her to her son the deft. Whereupon, the jury rendered a verdict for the pltff., and judgt. being given thereon, a writ of error removed the sd. cause at the instance of the deft., in which the only point put in issue before the sd. Supreme Ct. was the opinion given by the ct. below as to the legality of the sd. deed of 30th May, 1787. Whereupon, after argument and advisement thereon, the sd. Supreme Ct. decided that the sd. deed was void, and reversed the decision given by the ct. below, and did not award a venire de novo.

Though they showed that after the sd. decision the pltff. became non-suit in another eject. they had brought for the same lands agst. the same deft. to Jany., 1818, on the 12th of March, 1821.

Though they showed that the sd. Saml. P. Watson seized in fee under the descent to his mother, validated by the judgt. of the circuit ct. confirmed by the Supreme Ct., and duly executed upon the hab. fac. poss., and under the descent to him, which transit in veni judicature in the Supreme Ct. on the day of , 1820, died intestate in the same year, leaving the present pltffs. in error, his widow and children, to whom it descended, prout

clex postulat, and continued in the quiet and undisturbed possession of the sd. lands up to the 3d of April, 1826, when the act of Assembly on which the defts. in error rely, and until the 6th of April, 1826, when the first suit now *now* depending, was brought and continued in possession till 6th of May, 1829, when this suit was commenced.

Though they showed that an act of Assembly passed 26th March, 1785, limiting all actions for the recovery of real estate to twenty-one years from the time pltffs'. right descended or accrued, under which law they showed that Margt. Mercer died in January, 1802, leaving her husband survi'g, who continued in possession; that David Watson and Sarah his wife, on the 4th of Feby., 1802, sued an eject. agst. James Mercer, for the recovery of the lands, laying their demise and ouster on the first of that month. which suit abated in 1804 by the death of James Mercer, who devised these lands to be sold by John Mercer and others, his ex'ors, agst. whom, on the 4th of Feby, 1805, Watson and wife brought an eject. laying the demise and ouster on the 4th of Dec., 1804, in which they recovered and were put in possession on an execution to March term, 1809, and afterwards recovered the mesne profits from the ex'ors. That Sarah Watson dying seized in fee intestate, the sd. lands descended to her heir Samuel P. Watson, who being ejected by John and Margt. Mercer, defeated them by the judgt. of the Supreme Ct. in 1820, who dying intestate, the sd. estate descended to the pltffs. in error, who continued in the quiet possession until the 3d of April, 1826, and to the 26th of that month, when the first ejectment now pending was brought, making the time from 4th Feby., 1822, when first ejectment was brought, 24 yrs. 2 mo. less 2 days, until the act passed, till the first eject. now pending was brought 26th of April, 1826, 24 yrs. 2 mo. 24 days, till this eject. was brought on 6th May, 1829, 27 yrs. 3 mo and 4 days; and from 4th of Feby., 1805, when suit was brought agst. the ex'ors 21 yrs. 2 mo. less 3 days; and from 4th of Dec., 1804, when the demise and ouster is laid till the act of 3d of April, 21 yrs. 4 mo. 2 days; and to 26th April, when first suit pending was brought, 21 yrs. 4 mo. and 23 days, and to the bringing this suit 28 yrs. 4 mo. and 2 days, which gave complete title to them by the express letter of the act of lim'ns of the 26th of March, 1785, from mere lapse of time, preceded by a title resting on the protection given by the common law to the estates of femes covert, sedulously guarded by the act of Assembly of 24th Feby., 1770, devising a mode of conveyance of their estates environed by two judgts. of the Supreme Ct., and consecrated by the intestate law of the 19th of April, 1794, under which it passed, and came through three descents to the pltff. in error. Sealing it forever agst. the touch of judicial power, and setting at defiance all legislative power so long as the constitutions of the country remain.

Though they showed under the act of the 13th of April, 1807, co-operating with the two judgts. of the Supreme Ct., and the non-suit voluntarily suffered after these decisions were known, which act was designed to incorporate the equitable principle that chancery would perpetually enjoin all further litigation on a deed made the sole subject of litigation (as in this case the deed of the 30th of May, 1785,) in two ejects., and deliberately made by both parties the direct and sole question in the cause upon the records for the decision of the Supreme Ct. in each; the deed was by both decisions adjudged to be void; which was sufficient to bar and prevent further litigation from his deed, which is the sole cause of these two additional ejectments.

3d. Error. That the circuit and Supreme Cts. erred in the constrution they gave to the act of the 3d of April, 1826, in favor of the defts. in error, thereby giving life and effect to the deed of the 30th May, 1785.

1st. Because the said deed was extinguished by the two judgts. rendered upon it when put directly in issue before them by both parties, and decided upon before the enactment of the said law.

2dly. Because the three descents of the premises in dispute, first, to Sarah Watson made effectual agst. this deed by the judgt. of the circuit and Supreme Cts. in 1809. Secondly, the descent to Samuel P. Watson, sustained by the judgt. of the Supreme Ct. in 1820, in the eject. brought by John and Margaret Mercer agst. the said S. P. Watson, in which issue was directly taken before the Supreme Ct. between that deed and the said descent conflicting with it; and by the 3d descent to the pltffs. in error—all founded on, and sustained by, the intestate law of the 19th of April, 1794.

3dly. Because the title of the pltffs. in error under the said descents and judgt. grew up into a complete statutory title by the consent and acquiescence of the defts. in error under the act of lims. of the 26th of March, 1785, pltffs. in error having enjoyed the lands in dispute more than twenty-one years under the protection of the judgts. of the Sup. Ct. before that act passed.

4th. Because the act of the 3d of April, 1826, according to its true and just construction, was designed for the protection of purchasers made bona fide and for fair value only; and not to interfere in favor of mere volunteers to subvert rights previously acquired by descent, and corroborated by the strongest equities and the highest legal decisions.

5th. Because retrospective legislation impairing rights previously vested is tyrannical, unjust, and subversive of the first principles of society, and contrary to the constitution of Pennsylvania and the United States: or if not unconstitutional, the tribunals of justice are bound by every principle of construction to hold all legislation prospective, where the act is not in its very letter retrospective, as to the right it designs to impair and destroy. That this act has neither intention nor expression whence to impute to the Legislature such monstrous injustice. The ct. shd. therefore have construed it prospectively merely, as their predecessors had done.

6th. Because the pltffs. in error deriving their title under the patent granted for the lands in dispute by the late proprietaries of Penna. to their ancestor Samuel Watson, on the 19th of October, 1743, for full value, having in due course of law descended under the statutes of intestacy in Penna., confirmed by two adjudications of our Supreme Ct., in *in* which the transmission of the original contract by descent to the pltff. in error, which was directly opposed and put in issue by the deed of 30th May, 1785, in the said ct., and adjudicated upon, and further sustained by the statutory title derived under the statutes of limitations of the 13th of April, 1807, and of the 26th of March, 1785, places their title beyond the reach of either judicial or legislative power, and *and* renders the decision of the Supreme Ct. agst. them in this cause, and the act of 3d of April, 1826, upon which it is founded, null and void, being directly contrary to the provisions of the constitution of Penna. and the constitution of the United States, protecting and rendering contracts *contracts* inviolable.

JAMES HOPKINS,
JOHN R. MONTGOMERY, } *P. Quer.*

January 17th, 1834.
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